



ECM/ENE Initiative

**(Early Case Management/Early Neutral
Evaluation Pilot)**

Final Report to the State Justice Institute

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Executive Summary

In an effort to find an alternative to expensive, time-consuming traditional custody evaluations in family court cases, Hennepin County in 2001 piloted a program called Early Case Management/Early Neutral Evaluation (ECM/ENE). Forged as a bench, bar, and family court services collaboration, the program began with the involvement of just a few judicial officers. Early success prompted all judicial officers in the county to implement ECM/ENE. The experience and success in Hennepin County inspired judicial officers in other districts in Minnesota to experiment with ECM/ENE. Judges in the Third and Fifth Judicial Districts joined forces and with assistance and support from the State Court Administrator's Office (SCAO) applied for and received a State Justice Institute (SJI) State Court grant to support implementation of ECM/ENE throughout the Third and Fifth Judicial Districts, as well as expand ECM/ENE statewide.

In addition to the Third/Fifth Judicial Districts' pilot, from July 1, 2007, through June 30, 2010, the duration of the SJI grant period, ECM/ENE pilots were established in the Second Judicial District (Ramsey County), the Sixth Judicial District (Duluth/Southern St. Louis County), the Ninth Judicial District (Itasca County), and in two counties in the Tenth Judicial District (Anoka and Washington Counties). By the end of the grant period, programs were in development in the remaining judicial districts in the state.

During the grant period, the ECM/ENE Statewide Steering Committee, which had been established by the Judicial Council as part of the Minnesota Judicial Branch's Strategic and Operational Plans, met to provide oversight to the pilot programs. Every pilot program has one or more representatives on the Steering Committee. Common issues and challenges amongst the pilots were discussed by the Steering Committee members and Steering Committee meetings provided for a rich exchange of information and ideas.

While there are similarities around core features of ECM/ENE, implementation of ECM/ENE looks different in each program. Variances with respect to case loads, geography, available ENE evaluators, local culture, and other factors influenced how each program designed their approach. The ECM/ENE Statewide Steering Committee felt it important to demonstrate in the SJI final report the different approaches that may be used when implementing ECM/ENE so other counties or districts in Minnesota and other states nationwide may benefit from this extensive array of possibilities whether the setting is an urban, suburban, or rural court. This report includes background information about the development of ECM/ENE in Minnesota but focuses largely on each pilot program's description of their experience implementing ECM/ENE. Programs in development are described, as well. The report also touches on the SCAO staffing function that supports statewide expansion and concludes with best practices, conclusions and recommendations. Stated briefly, the ECM/ENE Statewide Steering Committee has identified the following six recommendations for consideration by the Judicial Council:

1. Provide adequate funding.
2. Provide ongoing SCAO staffing.
3. Amend the General Rules of Practice for the District Courts, Rule 114.
4. Provide judicial training.
5. Address statewide uniform data collection practices regarding ECM/ENE cases.
6. Determine the future role of the Statewide Steering Committee.

I. Introduction

The State Justice Institute (SJI) awarded the Minnesota State Court Administrator's Office (SCAO) a two-year State Court grant effective July 1, 2007, for the Early Case Management/Early Neutral Evaluation Pilot Project. SJI granted an extension that added one year to the project. The grant period ended on June 30, 2010, and this is the final report to SJI from the Minnesota SCAO.

Early case management (ECM) is a five-prong model used in family court that requires intensive judicial involvement very early in the case to tailor a case management plan and, in many cases, facilitate an expedited settlement. The five prongs are:

- 1) Initial Case Management Conference (ICMC)--a conference where the parties and attorneys appear before the judge within three weeks of case filing.
- 2) Preliminary Data Sheets--a two-page document submitted by the parties that assists the judge in preparing for the ICMC.
- 3) Judicial Presentation--at the ICMC, the judge helps the parties identify their major issues and speaks candidly about the choices available for resolution on each issue.
- 4) Stipulated, Tailored Case Management Plans--also as a part of the ICMC, the judge engages the parties and counsel to develop a stipulated case management plan tailored to the specific issues of the case.
- 5) Ensuring Continued Case Management--at the conclusion of the ICMC, the next court contact is scheduled, which is usually scheduled within 45 to 60 days after the ICMC; the judge is available to triage case plan implementation disputes that may arise during the first 30 to 120 days following the ICMC.

Early neutral evaluation (ENE) is a voluntary, confidential, high quality, affordable, prompt, evaluative alternative dispute resolution (ADR) process focused on generating durable settlements. ENE is a component of the fourth prong of ECM. It is at the ICMC that the judge introduces the option of ENE to the parties and describes the process and benefits. If parties opt in to ENE at the ICMC, their ENE session is scheduled usually within three weeks. In social ENE (SENE), custody and parenting time issues are addressed. In financial ENE (FENE), financial and marital estate issues are addressed. Social ENEs are always conducted by a male and female team to avoid any appearance of gender bias and often pair one attorney with one mental health provider. Financial ENEs are conducted by one evaluator, either male or female. ENEs are scheduled soon after the ICMC. SENEs usually take about three hours; FENEs usually take about six hours. Occasionally, additional sessions are required. A report to the court is usually provided within 30 days of the initial session informing the court about any full or partial settlement agreements that are reached.

Social ENEs are an alternative to traditional custody evaluations. A traditional custody evaluation in Minnesota is governed by Minn. Stat. sections 518.167 and 518.17. The court may order an investigation and report and order the parties to pay for a portion or all of the custody evaluation by either or both parties based on their ability to pay. Historically, in Minnesota local county court services departments provided custody evaluation services to the courts. Due to budget cuts, these services are no longer available through the county except in a few counties, primarily Hennepin and Ramsey Counties. When not provided by county court services staff, custody evaluations are provided by privately paid custody evaluators. The fees for private sector custody evaluations usually reach several thousand dollars, and often exceed \$10,000. Whether conducted by county court services staff or private custody evaluators, custody evaluations typically take many hours. The average number of

hours to conduct an investigation and prepare a report for the court by staff in Hennepin County's court services department is 43 hours.

The Fourth Judicial District (Hennepin County/Minneapolis metro area) family court started using ECM/ENE in 2001. Based on Hennepin County's experience and the recommendations of an ad hoc work group, in 2006, the Minnesota Judicial Council incorporated ECM/ENE into its Strategic Plan under the goal "Administering Justice for Effective Results." Under this goal, the Judicial Council set as a priority for the Judicial Branch the early resolution of cases involving children and families through strategies such as family ECM/ENE. The Operational Plan that accompanies the Strategic Plan established an ECM/ENE pilot in the Third and Fifth Districts (southern portion of the state) and a goal of expansion to another one or two districts. (Eventually, due to rapidly evolving interest, the Operational Plan was amended to reflect a statewide expansion goal.) The following year SCAO applied for and received a \$180,000 matching grant from SJI to support the Third/Fifth Districts' ECM/ENE pilot and expansion efforts. The Judicial Branch matched the SJI portion with \$180,000 for a total project amount of \$360,000 over three years.

This report first provides the background of the beginnings of ECM/ENE in Minnesota, the launch of the original pilot in the Third/Fifth, the addition of several more pilot projects during the grant period, and the status of expansion in Minnesota today. (See Appendix I for a map of Minnesota's counties and judicial districts.) The report then provides program descriptions for each pilot that launched during the grant period. Next, the report includes updates regarding programs in development. It then addresses SCAO staffing and other resources considerations. At the end, we have included a section on best practices and lessons learned from the programs and some conclusions and recommendations.

II. Background: The Beginnings and Expansion of ECM/ENE in Minnesota

A. The Beginnings of ECM/ENE in Minnesota

The SJI grant-supported pilot project had its roots in the experience of the Fourth Judicial District/Hennepin County family court. This excerpt from an article by the Hon. Tanja Manrique and James Goetz explains these origins:

The Origin of ECM and ENE in Hennepin County, Minnesota

In 2001, the Program Committee at the Hennepin County Family Court Services Division ("Family Court Services") determined that an alternative to full custody evaluations was necessary to better serve children, families, and the court. Early Neutral Evaluation was enumerated as an Alternative Dispute Resolution process within Rule 114 of the General Rules of Practice for the District Courts of Minnesota [see Appendix II for Rule 114], but ENE was not being utilized on family case types by any court or court services department in Minnesota. At the same time, the family court bench of the 4th Judicial District was developing a model of Early Case Management.¹ The Bench and Family Court Services have a long-standing cooperative working relationship, and quickly realized that ECM and ENE could be complimentary if implemented in tandem as a systemic reform. The Bench helped to shape the design and implementation plan for the ENE process, and Family Court Services assisted the Bench as it refined the ECM model. The close partnership was instrumental to gaining the acceptance of

¹ Former family court Presiding Judges Charles A. Porter and James T. Swenson were instrumental in the development of ECM and ENE.

family law practitioners. The SENE and FENE programs are offered as one component of the court's 5-pronged Early Case Management Model.

ENEs initially were implemented as a pilot project involving a few judicial officers and teams within Family Court Services. Regular meetings involving the Bench, Bar leadership, and Family Court Services occurred to evaluate implementation and make appropriate adjustments. The pilot project was successful, and eventually ECM/ENE was utilized by the entire Bench and professional staff at Family Court Services.

After approximately two years, the Bar leaders sought support from the Bench for the development of an ENE program to address marital estate and financial issues. An ad hoc Bench and Bar Financial ENE steering committee was designated and within a year the Financial ENE pilot was launched with a select group of judicial officers and a roster of private sector FENE evaluators comprised of attorneys and C.P.A.'s.² Today, the Family Court Services Division continues to provide the vast majority of Social ENE services in the 4th Judicial District, while FENE is provided by the private sector professionals on the FENE roster.³

Tanja K. Manrique and James Goetz, The Minnesota Model of Early Case Management/Early Neutral Evaluation (October 16, 2009) < <http://www.mncourts.gov/?page=4017> >⁴

B. The “Blatz Order”

Based upon the experience and the settlement rates in Hennepin County, an Ad Hoc Work Group on Family Court Early Case Management recommended to the Minnesota Supreme Court that the Court authorize the creation of ECM/ENE pilot projects throughout the state incorporating the Best Practices Guidelines the Ad Hoc Work Group had created. On April 23, 2004, then Chief Justice Kathleen Blatz issued Administrative Order ADM-04-8002, which opened the door for individual judicial officers or judicial districts to launch ECM/ENE pilot projects on a voluntary basis. The “Blatz order” declared that the Best Practices Guidelines superseded other rules of Court where they were inconsistent with those rules.

The “Blatz order” and the Best Practice Guidelines may be found in Appendix III.

C. The Third/Fifth Judicial Districts’ Pilot Project

The Third and Fifth Judicial Districts comprise the southern-most portion of the state, from the Iowa border on the south to the South Dakota border on the west, and to the Wisconsin border on the east. The Third Judicial District includes 11 counties and the Fifth Judicial District includes 15 counties. In

² This article addresses the FENE process in general, while emphasizing ECM and SENE because the authors initially presented this material as a comparison to the Colorado Child and Family Investigator process during the 2009 Association of Family and Conciliation Courts’ Regional Training Conference, *Interventions for Family Conflict: Stacking the Odds in Favor of Children*, November 5-7, 2009, in Reno, Nevada.

³ So many attorneys and custody professionals have attended training during the past few years that the supply of ENE providers in the 4th District currently exceeds demand. The evaluators have begun to branch out by offering their services in other areas of Minnesota, thereby enhancing the viability of the ECM/ENE expansion effort.

⁴ See also Tanja K. Manrique et al., *Family Court: A Public-Private Partnership to Serve Families in Transition*, The Hennepin Lawyer, May 2010, at 4. A copy of this article may be found in Appendix XV.

June 2005, retired Chief Justice Sandy A.M. Keith and a local custody evaluator, Monica Suess, approached the bench of the Fifth Judicial District to see whether they would consider piloting ECM/ENE in one of the counties in the district. On February 1, 2006, Brown County began scheduling ICMCs and social ENEs. Ms. Suess served as a volunteer coordinator for ENE referrals and handled all the scheduling of ENEs as implementation spread through the two districts.

In 2004 and 2005, Hennepin County staff developed and provided a two-day training program for practitioners interested in becoming social ENE evaluators. Chief Justice Keith, Monica Suess, and several others from the Third and Fifth Judicial Districts were trained in those programs. By the end of 2006 there was enough interest to expand ECM/ENE in all 26 counties in the districts and Monica Suess was hired as a half time ENE Coordinator. Plans moved ahead to hold a social ENE training program and on January 29 and 30, 2007, with Hennepin County staff and Judge Manrique as lead trainers, several more ENE evaluators were trained.

As the Third/Fifth Judicial Districts' pilot project move forward, staff from the Fifth Judicial District administrative offices collaborated with SCAO staff to prepare and submit a grant application to SJI. The application was submitted at the end of January 2007. Grant funds were sought to support the Third/Fifth Districts' pilot project and expand ECM/ENE. As the grant application stated, the objective of the project was to:

...assist with the work underway in the State of Minnesota Judicial Branch to develop and then implement a statewide ECM/ENE program based on the Hennepin County model through a multi-district pilot project for the Third and Fifth Judicial Districts. The program objectives are to:

- Expedite resolution of litigation
- Reduce acrimony among the parties
- Reduce costs to family court litigants by peacefully resolving disputes
- Reduce the number of appeals and post judgment motions to modify decrees

...the pilot project will lead to the implementation of ECM/ENE statewide in Minnesota. It has the potential to be an excellent model for other states and could be replicated elsewhere.

With the SJI grant, the Third/Fifth Judicial Districts' pilot was able to hire Monica Suess as a fulltime ENE Coordinator. The pilot created a steering committee that met regularly. The steering committee addressed draft orders, ENE evaluator qualifications, the ENE referral process, data gathering goals, confidentiality, and timelines. The committee's work was consolidated into a "tool kit" that may be found in Appendix IV. In addition, a training DVD of ICMCs was created. (The DVD accompanies this report, as well, in Appendix XX.) These materials were distributed to the judges of both districts. All materials have been made available via a Judicial Branch Web site.

By March 2008, 13 counties and 22 judges were participating in ECM/ENE. This is half of all judges in the two districts. Five teams of neutrals were providing services throughout the pilot. Sixty five (65) social ENEs had been held with sixty three (63) of those reaching a signed settlement agreement. By the summer of 2008, financial ENEs were being provided in Fillmore County in the Third Judicial District. Coordination for FENE in Fillmore County was handled in the same manner as for social ENE.

A year later, 118 ENEs had been held within the pilot with an 81 percent settlement rate. In the first three months of 2009, an additional 27 ENEs had been conducted with a 93 percent settlement rate. The use of ICMCs increased dramatically and three retired judges were added to the evaluator pool. Settlement rates remained high throughout 2009.

Monica Suess continued as the fulltime ENE Coordinator through 2009 at which time the position was eliminated due to lack of funding. However, each district has moved forward with ECM/ENE and descriptions of each program that reflect activity since January 2010 are included in section III. of this report.

D. Statewide Expansion

With early resolution of family court cases now a priority in the Judicial Branch's Strategic Plan, in the fall of 2006, Judges Tanja Manrique and John Rodenberg gave a presentation at the Judicial Branch's annual Family Law for the Judiciary conference that brought the concepts of ECM and ENE to an audience of over 120 judicial officers from all over the state. The presentation, Early Case Management and Early Neutral Evaluation: Reducing Conflict, Conserving Resources, and Expediting the Dissolution Process, provided the rationale behind and evolution of ECM/ENE in the state up to that point. Hennepin County's Family Court Services Division Director, Gunnar Bankovics, presented data to demonstrate the SENE success. The social ENE settlement rate was 73 percent. The financial ENE settlement rate was 72 percent.

In their presentation, Judges Manrique and Rodenberg provided a step-by-step overview of Early Case Management components highlighting that implementation of ECM does not necessarily require any new resources. They explained that ENE is an evaluative process and reviewed the general process. They shared Hennepin County data for 2004 through 2006 and Brown County in the 5th Judicial District for its first 14 cases. In Brown County, of the 14 cases referred for social ENE, two had not settled, two achieved partial settlement, and ten led to complete settlements. In Hennepin County, the rate of referrals for full custody evaluations dropped 17 percent. While complete settlements reduce the need for full custody evaluations, partial settlements serve to narrow the issues in a custody evaluation. As a consequence, the need for temporary hearings is reduced.

In the months that followed the presentation at Family Law for the Judiciary, Judge Manrique was contacted by district court judges across the state who expressed interest in launching a pilot in their respective counties.

The **Second Judicial District**/Ramsey County (St. Paul metro area) established a financial ENE pilot in April 2007. At the request of attorneys from Ramsey County, the evaluators who had been providing financial ENE services in Hennepin County created a financial ENE training program and trained several evaluators who went on to create a steering committee to launch FENE in Ramsey County. (Ramsey County eventually implemented a social ENE pilot, as well, and a description of those efforts is included in section III. below.)

In August 2007, Judges Sally Tarnowski and Shaun Floerke of Southern St. Louis County/Duluth in the **Sixth Judicial District** had been working closely with their bench and bar to explore launching a pilot. That month, Judge Manrique met with the judges and members of the bar to explain the steps involved. Within six months of contacting Judge Manrique, a three-day training (social and financial ENE) had been held in November 2007 where several evaluators in the Duluth area were trained and just two months later in January 2008, the Duluth pilot launched. Within the first ten weeks of the pilot, 32 dissolution actions had been filed and 18 of them settled at either the ICMC or ENE.

A few weeks after the Duluth pilot launched, Anoka County in the **Tenth Judicial District**, led by Judge Sharon Hall, held a training program for several dozen evaluators in February 2008. The Anoka

County Bar Association was very involved in organizing the training and continued to work closely with the bench to form a committee that planned their pilot launch. The Anoka County pilot launched on August 1, 2008. In the first five months of its pilot, the settlement rate for social and financial ENEs combined was 80 percent.

In September 2008, Judge Manrique and lead SENE trainers, Jim Goetz and Maryellen Baumann, met with the bench and bar of Itasca County/Grand Rapids in the **Ninth Judicial District** to explore the creation of a pilot in this northern Minnesota community. Judge Manrique and Judge Jon Maturi, lead judge for the pilot, met again in October to discuss plans for training evaluators in the Grand Rapids area. In January 2009, the three-day social and financial ENE training program was held in Grand Rapids. In the summer of 2009, the Itasca County/Grand Rapids pilot launched. In its first four months, 27 ICMCs were held at which ten agreements were put on the record and nine referrals were made to ENE. Of the first eight completed ENEs, seven resulted in complete agreements.

By the spring of 2009, Washington County, also located in the **Tenth Judicial District**, had expressed interest in launching a pilot. The three-day training was held in June 2009 where 72 evaluators from all over the state, but mostly from the Washington County area, were trained. The pilot launched on November 1, 2009.

As pilots came on board, one or two representatives from the pilot joined the ECM/ENE Statewide Steering Committee, which had been meeting regularly since early 2008. The Statewide Steering Committee serves as a forum for the pilot programs to exchange progress reports and share successes and challenges. It also provides oversight for implementing the core components of ECM/ENE with some statewide uniformity while recognizing the need for pilot programs to tailor their process to their unique needs.

An ECM/ENE program recently has launched in the **First Judicial District**, and planning is underway in the Seventh and Eighth Judicial Districts. In a matter of months, ECM/ENE programs likely will be running in all of Minnesota's ten judicial districts.

E. Steps To Launching A Pilot—A Guide

As momentum grew throughout the state and Judge Manrique received an increasing number of inquiries regarding the steps to launching a pilot, a succinct guide was prepared that outlines the basic steps and requirements. That guide may be found in Appendix V.

III. Program Descriptions

Each ECM/ENE program in the state was asked to prepare a program description for this report and address topics that include when the program launched; how their process works; how their rosters are managed; qualifications of evaluators; fees; forms used in their process; settlement data for the first six months of 2010, if available; challenges they encountered, keys to their success, and anecdotal feedback about their program, if available. These descriptions are provided here in the order in which the programs launched.

A. Fourth Judicial District/Hennepin County

The Fourth Judicial District is comprised of one county, Hennepin County. It comprises a large portion of the western half of the Twin Cities metropolitan area and includes the city of Minneapolis, several

suburbs, and smaller, rural communities near its western border. The population of the Fourth Judicial District according to the most recent U.S. Census Bureau data is 1,116,037 and the family court dissolution with children filings in 2009 were 1,622. Other family case types (e.g., dissolution without children, custody and parenting time matters, paternity matters, etc.) increase the pool of cases that potentially are referred to ENE. Annually, 10,000 family cases are filed in the District and assigned to 14 full-time family court judges and referees. More than 700,000 cases of all types are filed annually and the District has 62 judges working across its criminal, civil, juvenile, family, and mental health/probate courts.

Timeline and Process

The detailed chronology, description, and processes of the Fourth Judicial District program are set forth in the article *Family Court: A Public-Private Partnership to Serve Families in Transition*, which may be found in Appendix XV. As highlighted therein, a prime component of the program's success is the strong and long-standing support of the Hennepin County Bar Association's Family Law Section, the American Academy of Matrimonial Lawyers-Minnesota Chapter, and the Hennepin County Division of Family Court Services. Those stakeholder organizations, and their leadership in particular, have dedicated countless hours of work on development of the program, outreach to colleagues and the public, training, and the direct provision of evaluator services. The partnership with those stakeholder organizations will continue to be integral to maintenance of this new paradigm for managing family cases within the Fourth Judicial District.

Rosters and Qualifications

The FENE roster is updated several times a year by Suzanne Remington, one of the original attorney proponents of the program and co-chair of the District's FENE bench and bar committee. As evaluator contact information changes with office moves, telephone number changes, etc., she sends the revised roster to Judge Manrique and Lead Referee McGrath, and they in turn email it to the family court manager, Katie Brey, who posts it on the court's database. Judicial officers access the information, along with other program forms and description documents, online at a commonly shared Word folder. The current roster may be found in Appendix XVI-A. Suzanne Remington and Susan Rhode are co-chairs of the FENE committee, along with Judge Manrique.

Whether and when to add evaluators to the FENE roster are decisions made by the bench and bar FENE committee. The bench does not control that committee. The evaluators on the roster serve on the committee, which meets three or four times annually, along with Judge Manrique and Lead Referee McGrath. (At the outset of the program, the committee met at least monthly.) The roster has been expanded only one time, but the committee recently decided upon a plan to refresh the roster every two years. The roster will be expanded in 2011. Existing members will be polled to ascertain their interest in continuing to serve or resigning, and the resulting vacancies will be filled by committee vote after an open application process whereby all trained evaluators may apply.

The bench and bar concur that maintaining the quality of the evaluators is key to the long-term success of the program. To that end, the roster will not be comprised of every professional who participates in the three-day training program. Indeed, hundreds of practitioners in the District have been trained, yet the roster is comprised of approximately two dozen providers. The fact is that evaluator supply for FENE and SENE exceeds demand in the Fourth District. This reflects, to some measure, the degree to which the bar has embraced ECM/ENE. Practitioners elect to become trained for several reasons – the possibility of one day serving on the roster, the ability immediately after training to offer their services privately and separate from the pilot, and awareness that training will enable them to better represent clients in an advocacy role when ENE is selected as the preferred ADR option. As evaluators on the

roster opt to step aside, the peer-managed replacement process should serve to preserve the quality of the program while also expanding inclusion opportunities for practitioners who have completed the training.

There is not a SENE provider roster for the Fourth District, per se, because nearly all SENEs are conducted by the county staff in the Family Court Services Division. Every staff member is qualified under Rule 114 and must participate annually in substantial professional development coursework. The volume of SENE work completed by the Division likely exceeds the total cases of the other pilots combined. More than 500 SENEs were conducted by the Division in 2009, and the pace of referrals for 2010 is approaching 600. The unanimous consensus of the family court bench is that the work of the court simply could not be done without the availability of SENE by the Division. As a part of this large, urban, diverse District, the family court serves many poor and disadvantaged citizens who do not have access to legal representation and could not pay market rates for SENE. SENE is a tried and true program which provides efficient, effective, high-quality service to the citizens of Hennepin County.

Fees

The FENE program has operated on a sliding scale fee basis since inception. In contrast, the SENE program was offered at no-charge through the Family Court Services Division until January of 2010, when the Hennepin County Board mandated implementation of a sliding scale fee for the service.

FENE Sliding Scale Fee

<u>Gross Annual Family Income</u>	<u>Hourly Rate of Evaluator</u>
0 - \$25,000	\$0.00
\$25,000 - \$50,000	\$50.00
\$50,000 - \$75,000	\$75.00
\$75,000 - \$100,000	\$100.00
\$100,000 - \$125,000	\$150.00
\$125,000 - \$250,000	\$250.00
Over \$250,000	\$300.00

SENE Sliding Scale Fee

Based upon combined income. Fee is per case, not per party.

<u>Combined Income</u>	<u>ENE Fee</u>
\$100,000 +	\$500
\$90,000+	\$400
\$80,000+	\$300
\$70,000+	\$200
\$60,000+	\$100
Less than \$60,000	\$0

Data

The SENE data for the first six months of 2010 are as follows:

- 159 ENE cases
- 8 cases settled before ENE
- 102 cases reached full settlement
- 14 cases reached partial settlement
- 43 cases did not settle
- 91 cases both parties were represented by counsel
- 40 cases both parties were pro se
- 28 cases one party was pro se
- 64 % settlement rate on cases with full settlements
- 73 % settlement rate with full and partial settlements combined

Complete historical data were presented by Judge Manrique at the 2010 Family Law for the Judiciary seminar, where ECM/ENE was the focus of a half-day presentation with an emphasis on ICMC training for judges. See Appendix XVI for these historical data. The comprehensive data has been gathered and maintained by Gunnar Bankovics, Family Court Services Division Director.

The FENE data have been gathered and maintained by Dax Stoner, CPA, who has been a member of the steering committee from the outset. Data is compiled every six months. The January – June 2010 FENE data points are:

- 67 FENEs completed
- 49 FENEs settled (including partial)/73.1 percent
- 8 FENEs with a pro se party/12 percent
- 5.9 average evaluator hours on case/5.0 median evaluator hours on case
- \$144 average hourly rate for evaluator
- \$859 average total evaluator fees/\$595 median total evaluator fees
- 70 average number of days to resolution (from date assigned)/52 median number of days to resolution
- 2.9 average number of issues per case
- 1.6 average number of meetings/1.0 median number of meetings
- Financial ENE issues:

Antenuptial	1	1 %
Property Division	54	28%
Valuation	17	9%
Non-marital	25	13%
Spousal Maintenance	47	24%
Child Support	30	16%
Occupancy of Home	9	5%
Other	9	5%
Total Issues	192	100%

- Outcomes:

Total Settlement	34	50.7%
Partial Settlement	2	3.0%
Settled Prior to Or Outside ENE	13	19.4%
No Settlement	16	23.9%
No Settlement—to ADR/Mediation	--	0.0%
No Settlement—not ENE appropriate	2	3.0%
Total Cases	67	100%

Forms

The forms for the FENE and SENE programs may be found in Appendix XVI-B-K. These forms have been refined over the many years of the program and are distributed at the three-day training programs for new pilots throughout the state. The forms generally are modified by new pilots so as to best meet the preferences of the bench and bar in the respective jurisdictions.

Challenges

The Fourth District pilot has overcome many challenges, as was to be expected given the status as the original pilot in the State. The challenge began with contemplations at the outset of the decade about how to completely overhaul the management of family case types. Partnerships with the Family Court Services Division and the bar were tapped and enhanced. The actual design of ENE as a working ADR process, rather than simply an unused reference within Rule 114, was accomplished. Myriad forms, program descriptions, and training tools were created. Outreach in the form of speeches, articles, and continuing legal education seminars occurred. Ongoing training for newly assigned family court judges and referees was elevated to a priority.

By the fall of 2006, after the Fourth District ECM/ENE model was fully unveiled to a statewide audience of judges at the Family Law for the Judiciary conference, the focus within the District became two-fold: maintaining the quality of the local program and also serving as a resource to other Districts as they began the process of establishing pilots tailored to their local resources and practice preferences. The primary work of the District in the context of the SJI grant was, indeed, to serve as a resource for other jurisdictions. To that end, the SENE trainers were James Goetz, Maryellen Bauman, and Jennifer Rojer, all from the Family Court Services Division, and Judge Manrique. Family Court Services developed a training manual, enabled the trainers to be away from the office to conduct trainings in other districts, and hosted countless evaluators post-training so that they could observe SENEs firsthand before serving on cases. The FENE trainers were attorneys Suzanne Remington, Susan Rhode, Ben Henschel, Steven Schmidt, Dax Stoner, and Lead Referee Kevin McGrath and Judge Manrique. Referee McGrath authored the training manual for FENE. A DVD of Judge Manrique conducting an ICMC was created to assist judges who could not otherwise attend training or who sought a refresher sometime after training. The SENE manual, FENE manual, and ICMC DVD are included in Appendices XVII, XVIII, and XX respectively. The PowerPoint presentation developed by Judge Manrique for use during the three-day training may be found in Appendix XIX.

B. Third Judicial District Today

The Third Judicial District ENE Program was part of the Third/Fifth Judicial Districts' Pilot Project through December 2009. The counties served include: Dodge, Fillmore, Freeborn, Houston, Mower, Olmsted, Rice, Steele, Wabasha, Waseca, and Winona. The Third Judicial District is located in the southeast corner of the state. It is comprised of mostly rural and small communities, however, the city of Rochester (home of the Mayo Clinic) is located in the district in Olmsted County. The population of the Third Judicial District according to the most recent U.S. Census Bureau data is 462,622 and family court dissolution with children filings in 2009 were 849. Other family case types (e.g., dissolution without children, custody and parenting time matters, paternity matters, etc.) increase the pool of cases that potentially are referred to ENE.

After December 2009, the program immediately began to search for ways to continue utilizing the process and retain its designation as the pilot district in the grant. Those involved learned a great deal. They also noted that the program as great as it was, was indeed lacking in vital areas. There were some missing components. They were approached by a non-profit organization to assist on promoting the process with significant changes. These changes enhance the process and those involved believe will prove to be even more beneficial to the parties, the children, and the courts. This agency has already received some funding to promote this idea. This agency has gained support from the local mental health professionals, the bench and bar, other professionals and the public.

The loss of funding was damaging to district-wide usage of the program. However, many counties in the district continue to use the program—mostly on a county by county basis. Law clerks and judges individually have taken over the job of coordinating ENE's.

The success rate continues to be in the 90 percent plus rate, and even more cases are being resolved at the level of the ICMC. Those few that do not resolve at the ENE are later (within a few days) settled by the attorneys. Less than two (2) percent of over 300 cases in the Third Judicial District have come back contested over custody.

Today the program remains unbroken, effective and valuable to the parties, the courts, and the children. Since the conception of the process, and over 300 cases, the Third Judicial District has continued to maintain a steady 96 to 97 percent rate of a successful resolution between the parents regarding their parenting disputes.

C. Fifth Judicial District Today

The Fifth Judicial District ENE Program was part of the Third/Fifth Judicial Districts' Pilot Project through December 2009. The counties served include: Blue Earth, Brown, Cottonwood, Faribault, Jackson, Lincoln, Lyon, Martin, Murray, Nicollet, Nobles, Pipestone, Redwood, Rock, and Watonwan. The Fifth Judicial District is located in the southwest corner of the state. It is comprised of mostly rural and small communities. The population of the Fifth Judicial District according to the most recent U.S. Census Bureau data is 280,473 and family court divorce with children filings in 2009 were 480. Other family case types (e.g., dissolution without children, custody and parenting time matters, paternity matters, etc.) increase the pool of cases that potentially are referred to ENE.

The lead judge for the program is the Honorable John Rodenberg and he and Dick Fasnacht, Fifth Judicial District Court Administrator, serve as co-chairs for the program's steering committee.

The program offers primarily SENE's but FENE is available on a limited basis.

Timeline

As a stand-alone project, the Fifth Judicial District ENE program became operational in January 2010.

Since January 2010 the program's timeline includes the following key events:

- December 2009 – Funding for Third/Fifth pilot ends – Focus on self-sustaining model
- January 2010 – Present – Revise and launch family court page on Courtnet (Judicial Branch intranet)
- January 2010 – Present – Recruit and train male neutrals based in the Fifth
 - Increased roster from 1 male neutral to 6
 - Increased overall roster from 4 to 11 neutrals
- January 2010 – Present – Transition from central coordination
 - Creation and distribution of brochure containing names and contact information for neutrals to encourage attorneys and parties to directly arrange ENE
 - Creation of .pdf forms for ICMC and ENE that allow quicker referral and scheduling

Roster and Qualifications

The program roster was formed by identifying neutrals from the Third/Fifth roster who were willing to continue taking ENEs in the Fifth. Additionally, a number of trained ENE evaluators had not been included in the Third/Fifth pilot roster. Those persons were identified, offered ride-along opportunities and added to the Fifth District roster. Jim Goetz offered invaluable assistance in the early months when the Fifth had few male neutrals. Finally, the steering committee resolved to actively recruit persons to take ENE training in order to provide a broader geographic base of neutrals, particularly male neutrals.

The size of the roster is determined solely by the number of persons who have decided to take and complete training. Eligibility requirements for the roster are: completion of training, two ENE observations and compliance with continuing education requirements under Rule 114. The program uses a revolving application process and the roster is maintained by the ENE coordinator, a role now filled by the Fifth Judicial District Guardian Ad Litem (GAL) Program Manager.

Process

The Fifth does not exclude any case types as a matter of policy. Suitability is determined on a case-by-case basis.

Individual judges determine whether to conduct an ICMC. There is not currently uniform practice within the Fifth District. When they do occur, ICMCs are scheduled by court administration staff as soon as possible after filing.

With respect to its referral process, as part of the transition to a self-sustaining program, the Fifth Judicial District is moving toward a centralized process. Initially, the ENE program coordinator handled all referrals and selected the evaluators. Now, parties and attorneys are encouraged to select neutrals and arrange ENE directly, much like mediation, parenting time expeditor or other family court service provider. To this end, the program has created and distributed a brochure that contains the ENE roster and evaluator contact information. Presently, referrals occur in one of the following ways:

1. Court staff contact the coordinator requesting an ENE and forwarding the court order;
2. Party or attorney calls coordinator and requests ENE pursuant to court order; or
3. Parties and/or attorneys agree to an ENE before the ICMC, chose evaluators and inform the court at the ICMC.

Results of the ENE are communicated directly to the court by attorneys and the ENE team.

Fees

After the pilot project ended, ENE providers began to set their own fee structures. The majority of ENE teams still charge the pilot rate of \$300 per party, but some have included provisions for charging mileage or additional hourly rates for ENE that go beyond a single ENE session.

Data

Since the termination of the pilot project, the Fifth has not used the data collection form. The program plans to implement seamless data collection using .pdf forms for ICMC and ENE documents, including court orders and the ICMC/ENE participant feedback form. These forms will allow data to be collected directly from the documents, eliminating the need for a separate data collection form. The forms have been created and the program is in the process of transferring them to Courtnet (the Judicial Branch intranet). The forms for the Fifth Judicial District ENE program may be found in Appendix III.

Data from the first six months of 2010 indicate the following:

- 37 ICMC cases
- 2 cases settled before ICMC
- 14 cases settled after ICMC without further hearing
- 14 cases referred to ENE
- 12 ENE cases settled
- 2 partial settlements
- Majority of parties were represented by counsel
- 4 *in forma pauperis* (IFP) parties reported

Forms

Forms for the Fifth Judicial District program may be found in Appendix VI.

Challenges

When the combined Third/Fifth Judicial Districts' Pilot Project ended in December 2009, the Fifth District was faced with several challenges: 1) a relatively small pool of neutrals within the Fifth District itself, 2) only one active male neutral, and 3) the absence of ENE in the western third of the District. The program met those challenges by identifying trained neutrals who were not included on the roster, actively recruiting neutrals in underserved counties and promoting ENE directly to judges in the western portion of the district. Additionally, the steering committee has conducted outreach with the bar throughout the Fifth District.

Keys to Success

A key to success has been creating a program that is flexible enough to serve the needs of a primarily rural district with comparatively low case volume and low case density throughout a 15-county area.

Ongoing success will require additional effort to decentralize the ENE program by: increasing recognition of ICMC with the bar, encouraging market competition in the ENE market, addressing the needs of IFP litigants through a pool of volunteer or sliding-fee evaluators and improved data collection.

D. Second Judicial District/Ramsey County

The Second Judicial District is comprised of one county, Ramsey County. It comprises a large portion of the eastern half of the Twin Cities metropolitan area and includes the city of St. Paul and several suburbs. The population of the Second Judicial District according to the most recent U.S. Census Bureau data is 506,278 and the family court divorce with children filings in 2009 were 666. Other family case types (e.g., dissolution without children, custody and parenting time matters, paternity matters, etc.) increase the pool of cases that potentially are referred to ENE.

The lead judges for the program are Referees Mary Madden and Ann Leppanen. The program includes both SENE and FENE.

Timeline

The following table outlines the key events in the launch of first a FENE and then a SENE pilot within the district:

April 2007	FENE pilot established, monthly meetings held with evaluators and a judicial officer in an effort to implement in the district
October 2008	Family court referees began implementing ECM and holding ICMCs "Notice of ICMC" MNCIS form was created, and was mailed out to parties/counsel with ICMC data sheet
April 2009	Second Judicial District formally joined the SJI-funded State ECM/ENE Steering Committee as an ECM pilot district
May 2009	<i>Ad hoc</i> committee of judges, referees and court administrators began meeting to discuss more expansive implementation of ECM
June 2009	Family court referees made ECM/ENE proposal to the full bench, resulting in approval of a bench policy to implement ECM pilot program for handling of all family court cases Post-ICMC form order developed that included provisions for FENE referrals Case tracking form developed to assist in gathering statistics to track ENE referrals and ECM success
August 2009	Formal District ECM/ENE Steering Committee formed (includes 2 judges, 2 referees, Special Courts Administrator, Domestic Relations & District Research & Evaluation staff) Family court judges' calendars were revised to accommodate timely scheduling of ICMCs
September 2009	Family court judges began holding ICMCs
October 2009	ICMC data sheets revised to improve screening for domestic violence
November 2009	District ECM/ENE Steering Committee expanded to include four members of private bar, including legal services ECM/ENE Steering Committee created subcommittees to address the following issues: Domestic Relations, private SENE Program, GAL program, statistics & a volunteer mediation program, in addition to existing FENE subcommittee Obtained funding from the extended SJI grant to hire an SENE coordinator
December 2009	Hired contract SENE coordinator to assist in establishing a private SENE pilot program Posted request for SENE evaluator applications
January 2010	SENE committee reviewed applications, selected evaluators
March 2010	SENE evaluator orientation held Private SENE pilot formally launched with 34 providers Posted request for FENE evaluator applications to expand provider list
April 2010	FENE committee reviewed applications, selected evaluators FENE pilot increased from 8 to 20 providers Volunteer Mediation Program recruited 35 mediators. Subcommittee worked to formalize program protocols and processes
May 2010	Early Case Management Gala held with funding from the extended SJI grant to express the district's gratitude to all providers

Roster and Qualifications

The initial FENE roster was selected as part of the Fourth Judicial District's effort to expand the ECM/ENE Initiative beyond the Fourth Judicial District and into the adjoining Second Judicial District. The Fourth Judicial District requested applications from interested providers. Ultimately, a group of evaluators who officed in the Second Judicial District was selected in an effort to bring FENE to the district. The FENE roster was expanded from eight to twenty evaluators in April 2010. A request for

applications was posted on the Minnesota Judicial Branch Web site, and several listservs, including the Minnesota State Bar Association (MSBA) Family Law, the Collaborative Law and the American Academy of Matrimonial Lawyers (AAML) Minnesota Chapter listservs. The FENE steering committee, comprised of several of the original providers and two family court referees, met to review the applications and selected those with backgrounds that most closely matched the district's needs. For the SENE program, a request for applications was also posted on the Minnesota Judicial Branch Web site, and several listservs, including the MSBA Family Law, the Collaborative Law and the AAML listservs. The SENE steering committee, comprised of two family court referees, a member of the private bar, the district's family court manager and our SENE Coordinator, met to review the applications and selected those with backgrounds that most closely matched the district's needs.

The initial FENE roster was not determined by the district. It was determined as part of the Fourth Judicial District's effort to expand the ECM/ENE Initiative beyond the Fourth Judicial District and into the adjoining Second Judicial District. The initial FENE roster of eight evaluators was expanded to twenty in April 2010. The expansion was based on the bench decision in June 2009 to implement an ECM pilot for all family court cases and the resulting increase in referrals to FENEs by judicial officers at ICMCs.

The size of the SENE roster, selected in early 2010, was based on the qualifications of applicants; our desire to have approximately an equal number of male and female evaluators; our desire to have some evaluators with a family law background and some with a mental health background; and the need to create a roster of adequate size to provide services to those families excluded by the income limits of the Ramsey County Department of Court Services – Domestic Relations (a combined gross annual income of \$50,000 or less.). After the SENE subcommittee reviewed the applications, the above criteria resulted in the selection of 34 highly qualified and experienced evaluators.

Eligibility requirements for evaluators to be placed on the rosters are as follows:

FENE requirements:

All candidates had to meet the following criteria:

1. Be a qualified evaluative neutral pursuant to Rule 114.13(e) of the General Rules of Practice;
2. Have at least 5 years of experience as a family law attorney or as an accountant in divorce-related matters;
3. Complete or have taught financial early neutral evaluation ("FENE") specialized training;
4. Structure their practice to accommodate quick scheduling responses;
5. Accept the adopted FENE sliding fee scale, and
6. Have an attorney or other applicable professional license in good standing with the State of Minnesota, either in active or retired status.

SENE requirements:

All candidates had to meet the following criteria:

1. Complete family mediation training that satisfies the requirements as a Minnesota Rule 114 certified course, or other comparable Alternative Dispute Resolution training,
2. Complete early neutral evaluation ("ENE") specialized training,
3. Structure their practice to accommodate quick scheduling responses,
4. Accept the adopted SENE sliding fee scale, and
5. Meet additional criteria as outlined below for attorney or other professional candidates.

Attorney candidates had to also meet the following criteria:

1. Be a practicing attorney for at least five (5) years with substantial emphasis in the area of family law, and
2. Have an attorney license in good standing with the Minnesota Supreme Court, either in active or retired status.

Other professional candidates had to meet the following criteria:

1. Have a minimum of three (3) years experience working with families and children in dissolution-related matters, and
2. Have a professional license in good standing with the State of Minnesota, either in active or retired status.

So far, the program has only accepted applications and selected evaluators as the need has arisen. Referee Mary Madden, Co-Chair of the district's ECM/ENE Steering Committee and lead judge, maintains the SENE roster. The FENE roster is also maintained by an evaluator who is on that roster.

The following case types are scheduled for ICMCs:

1. Dissolution proceedings (with and without children)
2. Private paternity proceedings
3. Custody and parenting time proceedings
4. Third-party custody proceedings

Process

All judicial officers hold ICMCs. The ICMC is scheduled by the judicial officer's scheduling clerk and is scheduled three weeks from the date of filing. The judicial officer assigned to the case makes the referral to the ENE evaluators. Referrals to FENEs occur at the ICMC. Referrals to SENE may occur at the ICMC or later in the case. The parties and/or counsel for the parties pick the evaluators. FENE and/or SENE program descriptions are provided to parties/attorneys at the ICMC. A post-ICMC order is then issued. FENE and private SENE evaluators are appointed in that order. A copy of that order is faxed or emailed to the evaluator(s). Referrals to the Ramsey County Department of Court Services – Domestic Relations are made by separate order.

Parties represented by counsel pay the same hourly rate charged by their attorney for an SENE, and one-half their attorney's hourly rate for an FENE. The difference is based on the fact that two evaluators conduct SENEs and one evaluator conducts FENEs.

At the conclusion of the ENE, the evaluator(s) send an email or correspondence to the court advising what issues were resolved in the ENE process; what issues were not resolved; and/or that there was no resolution to any of the issues. Alternatively, counsel informs the court in a telephone status conference scheduled approximately 60 days after the ICMC.

Fees

ENE fees are determined per party. There is no fee for parties with a current IFP fee waiver on file, regardless of representation. Unrepresented parties' fees are based on the following sliding scale:

0-\$25,000 gross per year:	\$25 per hour
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\$25,000 - \$50,000 gross per year:	\$50 per hour
\$50,000 - \$100,000 gross per year:	\$75 per hour
Over \$100,000 gross per year:	\$150 per hour

Data

The program uses an Initial Case Management Conference ("ICMC") Data Sheet. The data sheet was modeled after those used in other districts at the time ECM was implemented. Further modifications were made to further identify issues of domestic violence. Specifically, the data sheet was modified to ask the following:

- Is there an Order for Protection in place? [Yes/No]
- If so, county, file number and who it protects.
- Have there been past Orders for Protection in place? [Yes/No]
- If so, county and file number.
- If no Orders for Protection have been issued, has there been domestic violence or abuse in your relationship? [Yes/No and by whom]

The ICMC Data Sheet is mailed to parties/counsel with the Notice of Case Assignment and Notice of ICMC (one notice). The judicial officers' clerks route the completed forms to the files for use by the judicial officer at the ICMC.

Until recently, the ultimate destination of the form depended on which type of judicial officer has heard the case. In cases assigned to family court referees, who chamber at the Ramsey County Courthouse, the forms were destroyed after the ICMC. In cases assigned to family court judges, who chamber at the Juvenile and Family Justice Center, the forms were filed in MNCIS (the Minnesota Court Information System) - some viewable as "public documents," and others not. This inconsistency was discussed in the early stages of the ECM program and no consensus could be reached amongst the judges, referees and court administration. However, the current consensus of all family court judicial officers is that the data sheets will not be filed in MNCIS or the court file.

With respect to ECM generally, effective January 1, 2010, a Case Tracking Sheet is placed on the left side of every family court file at the opening of the file. The Case Tracking Sheet is completed by the judicial officer/clerk as the case proceeds from commencement to entry of the Judgment and Decree or final order. The Case Tracking Sheet captures the following:

1. Date of filing
2. Case type
3. Date of Notice of Assignment
4. Whether an interpreter was required
5. Date of the ICMC
6. Whether the case settled at the ICMC
7. If the case was referred to Ramsey County Department of Court Services – Domestic Relations for evaluation or SENE; a private SENE; an FENE; the Volunteer Mediation Program; to a private provider (mediation/custody evaluation/SENE); or other
8. Whether an OFP or HRO was in effect at filing or issued during the proceeding
9. Date of any temporary hearing
10. Date of any pretrial and whether settled at pretrial
11. Date of any Moderated Settlement Conference and whether settled at that conference

12. Dates of trial
13. Date of entry of Judgment and Decree or final order

The clerk entering the final Judgment and Decree or final order enters the date of entry on the Case Tracking Sheet, removes it from the file and it is forwarded to the district's research analyst for compilation. (It was discovered at the end of July 2010 that this last step was not occurring. However, the situation has been rectified. All Case Tracking Sheets from those files in which a Judgment and Decree or a final order has been entered have been removed from 2010 files.)

With respect to FENE, evaluators complete a case data/outcome form upon completion of an FENE. This form captures the following:

1. Number of cases in which a full agreement was reached.
2. Number of cases in which a partial agreement was reached.
3. Number of cases resolved outside of FENE.
4. Number of cases in which there was no settlement.
5. Number of cases subsequently determined to inappropriate for FENE.
6. Average evaluator hours on the case.
7. Average hourly rate for the evaluator.
8. Average total evaluator fees.
9. Average number of days to resolution (date assigned to date of settlement).
10. Types of issues involved in the case.
11. Number of issues involved in the case.
12. Whether the case involved self-represented litigants.

Data from the completed forms is compiled by Karen Kritta, CPA, one of our FENE evaluators. Timely reporting of this data from Ms. Kritta is frequently delayed by untimely reporting of the data from some evaluators. Efforts continue to address this issue.

With respect to private SENE, evaluators will also complete a case data/outcome form upon completion of an SENE to capture similar information. The evaluators were provided a case data/outcome form at their orientation in March 2010. A confidentiality concern was raised regarding a segment of data requested, which the program is in the process of addressing. The program is also addressing whether the case data/outcome form should be revised to a form more consistent with the FENE case data/outcome form.

Currently, the Ramsey County Department of Court Services – Domestic Relations is not capturing any data for the SENEs conducted by its department. However, Domestic Relations does intend to capture that data with the final case data/outcome form ultimately decided upon for the private SENE program.

Data from the first six months of 2010 indicates the following:

Time period	January 1 through June 30, 2010
No. of ICMCs ⁵	344
No. settled at ICMC or before ENE	32
No. referred to ENE	<p>82 cases (91 total ENE referrals: 9 cases referred to both SENE & FENE)</p> <ul style="list-style-type: none"> ▪ 49 FENE referrals ▪ 14 SENE referrals to Ramsey County Department of Court Services – Domestic Relations ▪ 28 SENE referrals to private SENE pilot program
No. full or partial settlement	<p>28 SENE referrals have reported outcomes:</p> <ul style="list-style-type: none"> ▪ 21 held (75%) ▪ 7 cancelled (25%) ▪ Of those held: <ul style="list-style-type: none"> ○ 4 no settlement (19%) ○ 3 partially settled (14%) ○ 14 fully settled (67%) <p>FENE referrals – see attached data reported cumulatively from FENE program inception in April 2007 through July 31, 2010.</p>
No. referred to mediation or other ADR	41
No. of days to settlement (average) ⁶	<p>118 days (filing to closing)</p> <p>70 days (ICMC to closing)</p>
Representation of parties ⁷	<p>Both parties represented: 150 cases (44%)</p> <p>One party represented: 87 cases (25%)</p> <p>Neither party represented: 107 cases (31%)</p> <p>(56% of parties represented, 44% of parties unrepresented)</p>
IFP parties	<p>Both parties IFP: 25 cases (7%)</p> <p>One party IFP: 125 cases (36%)</p> <p>Neither party IFP: 194 cases (56%)</p> <p>(25% of parties IFP; 75% of parties no IFP)</p>

⁵ 54 Cases referred to the Ramsey County Department of Court Services—Domestic Relations for a full custody and/or parenting time evaluation.

⁶ Excludes days on inactive status.

⁷ Based on representation at the time of the ICMC.

In November 2009, the ECM/ENE Steering Committee formed a statistics subcommittee. That subcommittee had planned to compile data for the time period from January 1, 2008 through June 30, 2010, which included time periods both before and after ECM was implemented. This would create a comparison group to assess the success of ECM/ENE, specifically, the differences in case outcomes in terms of any impact on the number of temporary hearings, pretrials and trials; time from filing to resolution; and the use of ENE and/or other ADR options.

There have been numerous challenges to the collection and compilation of the above data. In spite of almost monthly subcommittee meetings since November 2009, court administration has been unable to provide sufficient data and/or sufficiently reliable data necessary to conduct a comprehensive analysis of pre and post-ECM data.

In spite of the above challenges, the rough data that was provided reflects the following after implementation of the ECM/ENE pilot:

- a. An 80 percent reduction in the number of temporary hearings;
- b. A 50 percent reduction of the number of pretrials;
- c. A 50 percent reduction in the number of trials; and
- d. A reduction in the time from filing to final order from 9.8 months to 5.7 months.

Forms

The forms for the Second Judicial District ENE program may be found in Appendix VII and include the following:

- 1. ECM Flowchart
- 2. Case Tracking Form
- 3. FENE Program Description
- 4. FENE Fee Schedule
- 5. FENE Case Data Form
- 6. SENE Program Description
- 7. SENE Fee Schedule
- 8. SENE Case Data Form(s)
- 9. Party/Attorney Information Sheet
- 10. Post-ICMC Form Order
- 11. Order to Place on Inactive Status

Challenges

Judicial assignments to family court. Family court in the Second Judicial District is handled by both referees and judges. There are four full-time family court referees, and three approximately half-time family court judges. (The remaining half-time the family court judges handle juvenile court.) The family court assignment for judges is 18 months, and the assignments are staggered so that an existing judge rotates off and a new judge rotates on every six months. This assignment schedule creates a number of challenges to successfully implementing ECM in all of family court.

One of these challenges is timely scheduling of ICMCs on cases assigned to judges (i.e., three weeks from filing). This issue was initially addressed by reconfiguring judges' calendars, and creating specific ICMC MNCIS sessions twice a month. This protocol began on September 1, 2009, but-stopped for some reason in early 2010. As a result, ICMCs with judges started being scheduled two to four *months* from filing. This issue was discovered in late July 2010 and has not yet been adequately addressed.

A second challenge is the delay in judicial management of family court cases created by the above assignment schedule. When the family court assignment begins, a judge is trained for approximately two weeks on family court, and the juvenile court assignment that accompanies it. As with any new assignment, a learning curve typically accompanies this assignment. This learning curve is significantly greater if the incoming judge has not practiced family law or previously been assigned to family court. (Also, the training includes virtually no education about substantive family law issues.) This learning curve, the short duration of the assignment itself and the frequency of transitions due to the staggering of assignments results in not only in delays in the judicial management of existing cases, but in implementing ECM in new cases. This issue has not been addressed by the district.

Attitude and resistance to change. Attitude and resistance to change have also proven to be a significant challenge. It is fairly common knowledge in the district that the majority of judges do not view the family court (or the Special Courts – Family & Juvenile) assignment positively. Some judges have been quite vocal about their distaste for the family court assignment and others have refused to do it. As a result, some judges spend more of their family court assignment focused on when it will end rather than on handling it conscientiously and to the best of their ability. This is detrimental if not ultimately fatal to the long-term implementation and success of ECM in family court.

Similar attitude and resistance to change issues have emerged in court administration. While some administration staff have been both supportive and instrumental to the success of the pilot, others have not. As a whole, court administration, particularly at the management level has not embraced the family court ECM/ENE Pilot adopted as a bench policy. This has manifested itself in failure to satisfactorily understand ECM's concepts, principles and programs; to adequately monitor judicial calendars to ensure timely scheduling of ICMCs; or to adequately participate in gathering case data necessary to evaluate the effectiveness of ECM/ENE.

In response to the issue of timely scheduling of judges' ICMCs, court administration has set forth a "best case scenario" of scheduling ICMCs *five weeks* after receipt of a new case filing, citing the following reasons:

1. a two to three-week delay between the time a new case filing is received and the time it is officially "opened" in MNCIS;
2. an inability to remedy the above delay;
3. staff turnover, medical leaves and the inability of remaining staff to absorb the work;
4. judges' vacations, leave, committee work, etc.; and
5. parties/attorneys' requests for continuances.

As a result of the above, most of the administrative work in developing and implementing ECM has been the responsibility of the lead judicial officers. This is also detrimental if not ultimately fatal to the long-term implementation and success of ECM in family court. There have been several conversations among various members of the ECM/ENE Steering Committee, the bench and court administration over the past few weeks to address these challenges. They have not yet been resolved.

Keys to Success

- Holding ICMCs in a timely manner (ideally within three weeks of filing);
- The availability of sliding fee ENE and other ADR programs;
- Judicial officers who have a comprehensive understanding of ECM, ENE programs, and other ADR options;
- Ability of judicial officers to adequately explain the above to parties at the ICMC;
- Scheduling the court appearance, case event and/or deadline at each point of court involvement beginning with the ICMC;
- Ongoing ECM/ENE leadership from judicial officers;
- A positive working relationship between the bench and bar; and
- The continued commitment of the bar and other financial and mental health professionals to provide ENE services on a sliding fee basis.

The ECM/ENE Steering Committee continues to meet on a regular basis to ensure ongoing success of the ECM/ENE pilot. Regular family court bench meetings are now being held to address the challenges raised herein.

Feedback

The following are comments from Family Court judges and referees in our district about ECM:

"While I have only been here a short time I believe that any early intervention works to accelerate settlement. In my limited experience, the results that have been enjoyed in all other judicial rotations (civil, probate, criminal) have been true with family. Almost all of the cases involving attorneys that go to ENE resolve without further hearing. There is no doubt that ENE is even better than mediation, especially in family court, where the parties just want some more certainty that what they are agreeing to is fair and within the realm of reasonableness."

"My first experience with the FENE process was actually a late neutral evaluation. The parties were at the counsel table at 9:00 a.m., prepared for a contested dissolution trial on spousal maintenance and property division. The case was 14 months old, and the parties were self-represented. Two FENE evaluators attending a meeting at the courthouse that morning volunteered to conduct a neutral financial evaluation, pro bono. The case was highly conflicted, and one party was less than honest. By noon the case had resolved, and a full agreement was read into the record – only due to the work of the evaluator. As the evaluators left the courthouse, one said to the other 'this is what we went to law school for.'"

"I recall a case with a young couple who had only been married for a few years, but the wife was insistent that she was entitled to spousal maintenance. I referred them to a FENE with the assurance that all of their questions would be answered. Sure enough, the case was resolved immediately after the evaluation."

"The ENE program has proven to be an efficient method to resolve custody matters. Example: A father commenced a custody and parenting time proceeding. At the ICMC, both parents and both self-represented, indicated their desire to resolve the matter without the time and expense of a full custody evaluation and litigation. However, they were unaware of any resources available to help them resolve the matter. I referred them to an SENE, and a full stipulated agreement on custody and parenting time was

submitted to the Court shortly after conclusion of the SENE. The SENE program provided these parties with a quick and efficient process to resolve their custody and parenting time dispute."

"I also want to add my view on how important it was for parties to be introduced to the judicial officer and have a conversation in a less adversarial situation. For many this seemed to decrease the emotional stress and personalized the process. I think this has helped by making people feel more comfortable and feel that they have more control over what is happening."

"I had a case that began with a request for an emergency ex parte order regarding custody of the parties' three children. The husband/father was in the military and the family was stationed in Japan. I immediately arranged for a telephone conference with counsel. We scheduled an ICMC as soon as possible, and arranged to have counsel appear personally and the parties appear by telephone. The ICMC was held at 8:30 a.m. (8:30 p.m. in Japan.) I had been struggling with how the issue of custody and parenting time could possibly be resolved given the parties residence. However, prior to the ICMC, the parties had talked, and come to an agreement on those issues. The agreement was read into the record, leaving only the financial issues for further discussion. I believe that early court intervention in this matter steered the case away from the path on which it had begun."

E. Sixth Judicial District/Southern St. Louis County

St. Louis County in northeastern Minnesota is the state's largest county geographically in terms of square miles and is located in the Sixth Judicial District. At its northern border, it is adjacent to Canada and at its southern tip it encompasses the port city of Duluth. Given the expansive geography, for the ECM/ENE Initiative, the southern portion of the county was designated a pilot project. The population of Southern St. Louis County according to the most recent U.S. Census Bureau data is 94,467 (this includes the cities of Duluth, Hermantown, and Proctor—the three primary cities in the pilot) and the family court divorce with children filings in 2009 were 215. Other family case types (e.g., dissolution without children, custody and parenting time matters, paternity matters, etc.) increase the pool of cases that potentially are referred to ENE.

Lead judge for the program is the Honorable Sally Tarnowski. The steering committee includes:

Dennis Korman—Korman Law Office
Ann LeRette—Sixth Judicial District GAL Program Manager
Larry Nord—Orman Nord & Hurd
Cheryl Prince—Hanft Fride, P.A.
Jack Setterlund—Retired Family Law Attorney
Judge Sally Tarnowski—St. Louis County District Court

The program offers both SENE and FENE services. The program became operational January 2008.

Timeline

In August 2007, Judge Tarnowski met with Judge Manrique and observed an early neutral evaluation in Hennepin County. Judge Tarnowski then met with several members of the family bar in late summer 2007 to discuss bringing the program to Duluth. Judge Tarnowski met with court administration to

determine how best to implement the program. A three-day training was held in November 2007 in Duluth for those interested in becoming evaluators. The program went operational in mid-January 2008.

Roster and Qualifications

A large number of people attended the training in November 2007 and all of them applied to be evaluators on the roster. The steering committee determined that so long as the applicants met the minimum qualifications, everyone would be put on the roster but would allow the parties to choose the evaluators. Anyone who meets the qualifications is placed on the roster. The qualifications are as follows:

- Early neutral evaluator specialized training, family mediation training, or other alternative dispute resolution training (e.g., arbitration, mediation, etc.).
- An attorney seeking to be either a financial or a social early neutral evaluator must meet the following criteria:
 - Must have been practicing law for at least 10 years and devoted 50 percent or more of his or her practice to the area of family law in the last 5 years, or have equivalent expertise and experience;
 - Must have family law trial experience;
 - Must be in good standing, either in active or retired status;
 - Must be able to structure his or her practice to provide for quick scheduling response to the Court's request; and
 - Must be willing to accept the fee structure provided for in the program.
- A non-attorney (i.e. social worker, psychologist) seeking to be a social early neutral evaluator must meet the following criteria:
 - Must have a master's level social work or psychology degree, LCSW, or LICSW or equivalent experience or expertise;
 - Must have at least 5 years concentrated experience working with families and children or guardian ad litem/family court experience;
 - Must be in good standing, either in active or retired status;
 - Must be able to structure his or her practice to provide for quick scheduling response to the court's request; and
 - Must be willing to accept the fee structure provided for in the program.

Evaluators are added to the roster as they apply though this has only happened a few times since the original roster was put together. Judge Tarnowski and the steering committee maintain the roster.

Process

Contested divorce, custody, and paternity cases are scheduled for ICMCs. Judge Tarnowski does most of them. Judge Floerke helps out when needed. Cases are not assigned to a judge until they either opt out of ENE or are unsuccessful in an ENE. When a Summons and Petition are filed with proof of service, the family clerk schedules them on the judge's ICMC calendar. Dates are made available for this purpose on a regular basis. ICMCs are generally scheduled within two to three weeks of filing. Notices are sent by court administration within days of the initial filing.

The parties/attorneys choose who the evaluators will be in the courtroom. The judge then contacts the evaluators from the courtroom to determine their availability and a date is set. Several evaluators send emails to the court prior to ICMC days with their dates of availability over the next month or so, which speeds up the process considerably if they are chosen. The evaluator(s) date and location are determined at the ICMC. An order is prepared at the ICMC and provided to the parties at that time.

Prior to the ENE, a checklist with the other materials and order from the court are sent to the evaluators. They return these following the ENE. If the court hears nothing after 30 days from the ENE, the parties/attorneys are contacted either by phone or by email to determine the status.

Fees/Use of Guardians Ad Litem As ENE Evaluators

The program uses a sliding fee schedule: \$0-\$25,000 gross combined income is free; \$25,000-\$50,000 gross combined income is \$180 per hour; \$50,000-\$75,000 gross combined income is \$200 per hour; over \$75,000 is \$250 per hour. The parties split the fee unless they come to some other arrangement.

Initially, the program used a fee schedule that had a flat rate rather than an hourly rate. Attorneys were complaining that they were doing ENEs for \$40 per hour or less on a regular basis, so the program switched to an hourly basis. Providing pro bono evaluations was also a challenge. The Guardian Ad Litem (GAL) Program and Legal Aid have worked with the program to provide evaluators who are willing to do the evaluations in IFP or pro bono cases and for lower income parties at a reduced rate. The GAL Program plans to expand the use of GALs for ENEs and will track data specific to cost savings by reducing the number of GAL appointments, realizing a potential savings for the GAL Program.

The GAL Program currently has ten trained SENE evaluators (seven in Duluth and three in Virginia/Hibbing) who are attorneys, guardians, or mental health professionals. The GAL Program has provided 14 social ENEs with 13 evaluations reaching settlement. The majority of the SENEs provided have been for IFP parties.

Data

The program does not use the standard data collection form, however, it tracks data. The judge unit is responsible for data collection and tracks number and type of cases, date of ICMC, settlement rates at ICMC, type of ADR, settlement rates at ADR, length of ENE, and cost of ENE. Data from the first six months of 2010 indicate the following:

- 77 ICMC cases
- 27 cases settled at ICMC or before ENE
- 27 cases referred to ENE (12 are pending)
- 13 settled at ENE
- 11 full settlement
- 2 partial settlement
- 2 referred to mediation or other ADR
- 13 average number of days to settlement
- In 2 cases, petitioner was pro se, in 30 the respondent was pro se, in 8 both were pro se
- 27 IFP parties

Forms

The forms for the Sixth Judicial District/Southern St. Louis County program may be found in Appendix VIII.

Keys to Success

A key feature of success in the program is buy-in by the local bar, not only in adapting their practices but also in being evaluators at a reduced rate to their usual and customary fees. The bar has totally embraced the program, clients are prepared when they enter the courtroom, and attorneys and evaluators are working together to get cases resolved.

Feedback

Prior to the implementation of this program, all contested family cases were assigned to a judge. They would have a scheduling conference a few months from filing (if they did not have a temporary motion hearing) and would be given trial dates nine to twelve months out. There are about 225 of these types of cases per year. Now, 45 percent of those, or approximately 100 cases, settle at the ICMC—a few weeks from filing. Many of these are pro se cases involving litigants who do not know how to move their cases forward. In other cases, attorneys spend some time prior to the ICMC and come in prepared to put an agreement on the record. The parties leave happy, and the court has saved administration time in scheduling other hearings and trials.

F. Ninth Judicial District/Itasca County

The Ninth Judicial District is Minnesota's largest judicial district geographically in terms of square miles and is located in the far north central and northwestern portion of the state. Itasca County is located in the eastern portion of the district. The population of Itasca County according to the most recent U.S. Census Bureau data is 44,727 and the family court dissolution with children filings in 2009 were 85. Grand Rapids is the largest city in the county and serves as the county seat. Outside of Grand Rapids, the county is entirely rural with several small towns.

The lead judge for the program is the Honorable Jon A. Maturi and the steering committee chair is Sara Swanson. Both SENE and FENE services are provided. Itasca County's pilot program began on June 29, 2009.

Timeline

Sara Swanson, the steering committee chair, first heard a reference made to the ECM/ENE process during an online CLE on May 15, 2008. After emailing a question to Minnesota CLE asking what ENE was, she was referred to Judge Tanja Manrique. Over the next few weeks, Judge Manrique began the process of educating Sara about ECM/ENE via emails. On June 4, Sara emailed the three local judges to see if any of them would be interested in pursuing a pilot, and fortunately two of the three Judges (along with the family court administrator) were interested in exploring the option. On June 11, Judge Manrique and Sara had a phone meeting where she provided a detailed overview of the process and also explained what steps would be needed if Itasca County should decide to launch a pilot.

On June 12, Sara emailed all of the attorneys in the county to see if there was local bar support/interest for a pilot, which there was. Due to the busyness of everyone's summer schedules, an informational meeting/presentation was set for September 12. On the 12th, Judge Manrique came to Grand Rapids, along with two of the trainers for the ENE program (Jim Goetz and Mary Ellen Bauman) – the three of them presented a detailed overview of the process. The presentation was well attended, and shortly thereafter (September 22) those interested in pursuing a pilot met and formed a steering committee, which voted unanimously to implement a pilot.

After the vote to move forward with a pilot, the steering committee began working with SCAO to arrange the training for SENE/FENE evaluators. The training took place in late January of 2009 and the steering committee continued meeting. It developed a policy for evaluators, asking that they observe at least two live ENEs before serving as evaluators. It also developed policies relative to pairing of evaluators. Jim Goetz was an invaluable resource to Itasca County's pilot, traveling regularly for SENEs. The program has also been assisted by evaluators from Duluth (Cheryl Prince and Larry Nord), who are willing to do both FENEs and SENEs in Grand Rapids. A few couples have also driven to Duluth to use Jack Setterlund as an evaluator.

From January through late spring of 2009, the local attorneys and GALs worked on setting up live observations in Duluth and Minneapolis. The SENEs in Hennepin County were ideal for observing because of the frequency, the space, and the extra room to listen without interfering. Arranging observations in Duluth proved to be more difficult, but some took place there as well.

By late spring/early summer 2009, Itasca County had a roster of evaluators, and the first ICMC took place at the end of June. There have been cases where parties (usually with counsel) have scheduled ENEs without ICMCs (usually due to costs of parties paying counsel to drive from out of the area when the parties have already agreed to proceed with an ENE). While there have been many bumps along the way, the program has had great success over the past year since inception.

Operationally, things have run smoother in the last four to six months (since hiring a part-time coordinator, who assists in scheduling all of the ENEs and preparing the ICMC orders following hearing, etc). Unfortunately, the funding for that position has ended, but the committee is working on creative solutions to try to keep that person in place.

Itasca County also has been fortunate to receive a \$5,000 grant from the Blandin Foundation (whose home is in Grand Rapids), which has allowed the program to make ENEs accessible to indigent parties. Prior to offering any ENEs, the committee voted to charge all ENEs (both SENE and FENE) at a flat fee of \$600 (\$300 per party unless agreed otherwise). However, because of the Blandin Grant, the judges are given discretion to waive a portion of those fees (and the difference is made up by the Blandin Grant, so that the evaluator(s) are paid \$600).

Roster and Qualifications

As mentioned above, the steering committee determined a policy that allowed any interested persons to be put on our roster so long as they have completed their training and observed at least two ENEs. The committee has allowed folks from other locations to be added to our roster so long as they meet the qualifications. The same policy applies for both SENE and FENE evaluators.

Itasca County has five (5) FENE evaluators and fourteen (14) SENE evaluators. Evaluators who have the required training from other districts, who are willing to travel to Itasca County, make up a significant portion of the rosters. There was an interest from local family practice lawyers in this pilot program and they also make up a large part of the rosters. The committee wants to maintain the current selection of evaluators because the committee does require a male and a female evaluator for SENEs and that one be an attorney. The current roster meets the committee's criteria. There is no limit on the number of evaluators for the rosters.

Generally the FENE evaluators are accountants or attorneys. SENE evaluators can include therapists, attorneys, custody evaluators or guardians ad litem, etc. As indicated, evaluators are required to go through the ENE training and to observe two ENEs before qualifying to be an evaluator. The committee is willing to add evaluators on an ongoing basis. Sara Swanson, steering committee chair, maintains the roster.

Process

Only dissolution of marriage with or without children cases are scheduled for ICMCs. Itasca County has three Judges. Judges Jon Maturi and John Hawkinson are the two judges who participate in the pilot program and they both do ICMCs.

The ICMC is scheduled by the court administrator. There is a standing order that the ICMCs are to be scheduled within 14 days of the filing. There is an occasion that it is impossible to schedule the ICMC within 14 days of filing but generally, the ICMC is scheduled in this required time frame.

Using grant funds (from the Statewide Steering Committee), the program has been able to hire a temporary ENE coordinator who handles all ENE referrals. She provides a list of evaluators to the parties/attorneys who are willing to attempt an ENE and allows them to pick from the list. She then calls the evaluator(s) to check availability. The ENE coordinator attends all ICMCs and if a referral is made at the ICMC, the coordinator meets with the parties and their attorneys (unless pro se) immediately after the ICMC to schedule the evaluation.

The ENE coordinator drafts the order for the judge to sign. After the order is signed, a copy of it is sent to all parties along with a copy to their attorneys (unless pro se). The order indicates who the evaluators are, when the evaluation is scheduled, and the location of the evaluation. The order also indicates what the fee is for both parties.

At the conclusion of the ENE, evaluators are to notify the court as soon as possible of the outcome of the ENE. This is normally followed up with a letter to the court if there was full settlement, partial settlement or no settlement.

Fees

There is a flat fee of \$600 for both the SENE and FENE. This is usually equally divided by each party unless they mutually agree differently. Itasca County does have a “sliding fee” for indigent parties from a \$5,000 grant that the Blandin Foundation has provided the pilot program. If the party/parties qualify for this sliding fee, they are required to pay at least \$25 of the fee.

The Itasca County program is using the standard data collection form. It has modified the data collection form to include other data that the committee believes needs to be tracked. The ENE coordinator is responsible for the data collection forms. In addition to using the data collection form, the program tracks information such as who the evaluators were, when the evaluation was scheduled, when the evaluation was completed, how much time the evaluators spent on the ENE, if the Blandin Foundation grant was utilized, and how much of the Blandin Foundation grant was used.

Data

Prior to hiring the ENE coordinator, the program had difficulty tracking data. The pilot did not have anyone who had the time to track all the information. As indicated above, since hiring the ENE Coordinator, the program is operating more effectively.

Data from the first six months of 2010 indicate the following:

- 23 ICMC cases
- 7 cases settled at ICMC or before ENE
- 6 cases referred to ENE
- 4 ENE cases settled (2 did not reach a settlement at ENE)
- 4 cases reached full settlement

- 0 cases had partial settlements
- 0 cases were referred to mediation or other ADR
- All 4 ENEs settled at the initial evaluation
 - #1 – From ICMC to settlement at ENE – 22 days
 - #2 – From ICMC to settlement at ENE – 24 days
 - #3 – From ICMC to settlement at ENE – 40 days
 - #4 – From ICMC to settlement at ENE – 49 days
- Of the 6 scheduled ENEs (12 individuals), 10 were represented, 2 were pro se
- Of the 6 ENEs scheduled (12 individuals), 9 were IFP, 3 were not IFP

Forms

The forms for the Itasca County ENE program may be found in Appendix IX and include:

1. The court administrator provides a handout that is mailed to all parties that have filed for dissolution of marriage describing the ENE program and process.
2. ICMC Data Sheet
3. Order Following ICMC-FENE
4. Order Following ICMC-SENE
5. Fee Guidelines Form for Indigent Parties under the Blandin Foundation grant
6. ENE Outcome Measures Form for SENE
7. Evaluator Case Form for FENE
8. Feedback Form for Participants
9. Feedback Form for Attorneys

Challenges

Before the program hired its ENE coordinator, there were administrative challenges. Losing the coordinator as the grant funds have been exhausted has been a challenge, but the program is attempting to find other sources of funding (an additional grant from the Blandin Foundation, considering a small fee to be tacked onto the \$600 evaluation fee, a car wash or other fundraiser). Other challenges include obtaining buy-in from the legal community.

Keys to Success

Some of the keys to success in the program are great evaluators, supportive judges, support from most of the bar association, and regular meetings to evaluate, adjust, and hopefully improve the process. All of these should continue long term, although the program is concerned about sustainability if it is unable to get additional grant funds for indigent parties as they represent such a large portion of the program's divorcing parties.

Feedback

In addition to success reflected in high settlement rates, those involved with the ENE process have described it as therapeutic. Seeing divorcing parents learn to see things from the other parent's perspective (at least in part), or more importantly from their children's perspective, is really incredible, and something that almost never happens in the context of a contested trial. Hearing both parties' sides of the story early on can also lead to meeting a significant need of the litigants (just being heard). Helping people realize that they can create their own outcome is rewarding.

The Honorable Jon A. Maturi, Chief Judge of the Ninth Judicial District, recently stated, "As a result of early case management (through the ICMC process and the option of ENE), I see a definitive increase in

the number of cases settling earlier in the process. More importantly, I see less contention and more awareness by the parties of the need to focus on the interests of their children as opposed to their own.”

Last fall the steering committee chair, Sara Swanson, represented a father who participated in both an FENE and SENE successfully. The mother knew that Sara had worked on implementing the local pilot, and at the conclusion of the second ENE session (where they executed an MTA), she thanked Sara for helping to implement a program with so much common sense, dignity, and sanity. In 11 years of practicing family law, Sara has yet to have another adverse party thank her at the end of a case. It was an unusually positive moment for the normally very acrimonious process of divorce.

The program sent out surveys to participants and attorneys who were involved in the ECM/ENE process in April 2010. Of 28 participants surveys that were sent, 12 surveys were returned with 90 percent of participants indicating that they would recommend this process to someone. Often attorney surveys that were sent out, six surveys were returned with 70 percent indicating they believe the ENE resulted in faster settlement than traditional methods.

Parties in the ENE process have made positive comments:

“The ENE was a great program.” “I would highly recommend this process to everyone,” and it was a “very good process.”

Those involved in the program feel it has been a privilege to implement the program where positive changes have been seen and continue to be seen. It has been a positive experience for the committee members to watch people learn to listen to each other, communicate with openness, and resolve conflict.

G. Tenth Judicial District/Anoka County

Anoka County is located in the northwest corner of the Twin Cities metropolitan area and is part of the Tenth Judicial District. The population of Anoka County according to the most recent U.S. Census Bureau data is 331,582 and the family court dissolution with children filings in 2009 were 567.

The lead judge for the program is the Honorable Sharon L. Hall. The Anoka County ENE Steering Committee members include:

- *Marna Anderson—Hicken, Scott, Howard & Anderson, P.A.
- Melissa Epping—ENE Coordinator, Anoka County Attorney’s Office
- *Judge Bethany Fountain-Lindberg—Anoka County District Court
- Judge Tammi Fredrickson—Anoka County District Court
- Judge Sean Gibbs—Anoka County District Court
- *Judge Sharon L. Hall—Anoka County District Court
- Sue James—Anoka County Court Administration
- Lisa Kallemeyn—Kallemeyn & Kallemeyn
- Jean A. Lastine—Central Minnesota Legal Services
- Sarah Lindahl-Pfieffer—Anoka County Court Administration Supervisor
- Janeen Massaros—Guardian ad Litem
- Kate McPherson—Anoka County Bar Association 2008-2009 President
- *Rachel Morrison—Temporary Special Assistant Anoka County Attorney
- Kim Murdoff—ENE Coordinator, Anoka County Attorney’s Office
- Connie Moore—Alexandra House Executive Director
- Linda Paul—Anoka County Court Services

Sue Redmond—Alexandra House Community Program Director
Elizabeth Schading—Barna, Guzy & Steffen, Ltd.
Judge Barry Sullivan—Anoka County District Court
Judge Jenny Walker Jasper—Anoka County District Court
Marnie Zak—Law Clerk to Judge Jenny Walker Jasper

*While the Anoka County ENE Steering Committee does not have co-chairs, the designated individuals comprise a core group who perform most of the work concerning ENE forms, finances, neutral evaluator applications, and training.

Anoka County offers both CPENE (Custody Parenting Time ENE) and FENE (Financial ENE). The program renamed SENE to CPENE in order to help clarify that this program deals exclusively with custody and parenting time issues.

Timeline

When Judge Jim Swenson and his colleagues started their ECME/ENE program in Hennepin County six years ago, Anoka County was surprised by the reported results in Hennepin – that after implementation of the program custody, parenting time and financial dispute dissolution cases were resolving faster and better for families going through the divorce process. Case management data in Anoka County showed that they were processing cases – from filing through final disposition – faster on average than Hennepin County. However, the family law section of the Anoka County Bar Association believed that timing was not the best measure of a successful outcome in a dissolution and that there may be a better way to get parties through the difficult divorce process. Because the lawyers' experience in handling dissolutions through the Hennepin County ENE program was so favorable, they requested that the Anoka Bench support the creation of a steering committee to determine whether or not an ENE program could be replicated in Anoka County.

In the fall of 2007, a member of the Anoka County Bar Association's Family Law Section made a motion to form a committee to consider whether an ENE program could be implemented in the county. The Anoka County ENE steering committee was formed, which included members of the bar, the bench, legal aid, a representative of Alexandra House (the county's domestic violence shelter), guardians ad litem, court services, court administration, the county attorney's office, and other interested people. Subcommittees of this committee were formed to develop forms, handle finances, recruit neutral evaluators, gather data, etc. The committee also developed a sliding fee scale that set the ENE fees based on each party's income.

The committee solicited funds from the SJI grant, MN State Bar Foundation and the Anoka Bar Association. Central MN Legal Services also donated money to be used to reimburse neutrals who accepted IFP cases. At that time, the committee contracted with Sheri Hawley, a pilot coordinator, who was at the courthouse for the ICMCs and who then selected the neutral evaluators and scheduled the parties for their initial ENE sessions.

The Anoka County Bench adopted and approved the implementation of an ENE program in the spring of 2008. The pilot kicked off in August of 2008. It began with five Anoka judges and their blocked family cases. In July 2009, the bench voted to expand the pilot so that all dissolutions in Anoka could participate in the program because the initial phase of the pilot was so successful. However, not all judges do the ICMC hearings. The original pilot judges along with two others handle the ICMCs. After the ICMC, all future proceedings in the case go back before the blocked judge. As of August 2010, the

Anoka County bench agreed to expand the pilot to also include privately initiated paternity cases, custody and parenting time cases, and legal separation cases.

Roster and Qualifications

The roster was initially formed as a result of the February 2008 ENE neutral evaluator training. Our Team Formation Subcommittee designated the desired qualifications for neutral evaluators and approved application forms for Anoka County ENE neutral evaluators. Application materials were distributed to individuals interested in become neutral evaluators in our program and the completed applications were submitted to the steering committee for approval. The size of our neutral evaluator roster is not limited.

The Anoka County ENE minimum qualifications for early neutral evaluators are defined as follows:

- ***All Evaluators***, including financial evaluators (FENE) and custody and parenting time evaluators (CPENE) must meet the following criteria:
 - Complete family mediation training that satisfies the requirements as a MN Rule 114 certified course or other comparable Alternative Dispute Resolution training (e.g. arbitration, mediation, etc.);
 - Complete six (6) hours of certified training in domestic abuse issues. (See MN Rule 114.13 (e));
 - Complete Early Neutral Evaluation (“ENE”) specialized training;
 - Structure your practice to accommodate quick scheduling response to the Court’s request;
 - Accept the adopted ENE fee structure; and
 - Meet the additional criteria as outlined below for attorney or non-attorney evaluators.
- Attorneys seeking to serve as a Financial Early Neutral Evaluator (“FENE”) or Custody and Parenting Time Early Neutral Evaluator (“CPENE”) must also meet the additional criteria as follows:
 - Be a practicing attorney at law for at least ten (10) years with substantial emphasis on the area of family law in the last five (5) years, or have equivalent expertise and experience; and
 - Have family law trial experience or equivalent expertise and experience; and
 - Have an attorney license in good standing with the Minnesota Supreme Court, either in active or retired status; and
 - For attorneys seeking to serve as a CPENE, observe two (2) Custody or Parenting Time Early Neutral Evaluation sessions through a “ride-along” at Hennepin County. An attorney may petition for a waiver of this requirement if the attorney has either (1) served as an evaluator in Hennepin County ENE involving custody or parenting time or (2) participated as an attorney in two (2) or more ENE sessions involving custody or parenting time; and
 - For attorneys seeking to serve as a FENE, observe one (1) Financial Early Neutral Evaluation session through a “ride-along” at Hennepin County. An attorney may petition for a waiver of this requirement if the attorney has either (1) served as an evaluator in Hennepin County ENE involving financial issues or (2) participated as an attorney in one (1) or more ENE sessions involving financial issues.
- Other Professionals (i.e. social worker, psychologist) seeking to be a Custody or Parenting Time Early Neutral Evaluator (“CPENE”) must also meet the following criteria:

- Have a minimum five (5) years concentrated experience working with families and children on divorce-related matters, including custody, visitation, or related issues; and
 - Have a Master's level Social Work or Psychology degree, LCSW, LICSW, LP, or LMFT, or equivalent experience and expertise; and
 - Have a professional license in good standing, either in active or retired status or equivalent experience and expertise; and
 - Observe two (2) Custody or Parenting Time Early Neutral Evaluation sessions through a "ride-along" at Hennepin County. A non-attorney that has served as an evaluator in Hennepin County ENE involving custody or parenting time may qualify for a waiver of this requirement.
- Other Professionals (i.e. accountant, financial advisor) seeking to be a Financial Early Neutral Evaluator ("FENE") must also meet the following criteria:
 - Have a minimum five (5) years concentrated experience working with families and children on divorce-related matters, including property valuation, spousal maintenance or child support, or other related fiscal issues; and
 - Have a Certified Public Accountant license in good standing, either in active or retired status or equivalent experience and expertise; and
 - Observe one (1) Custody or Parenting Time Early Neutral Evaluation session through a "ride-along" at Hennepin County. A non-attorney that has served as an evaluator in Hennepin County ENE involving property valuation, spousal maintenance or child support, or other related fiscal issues may qualify for a waiver of this requirement.

The program has an open and ongoing application process and accepts neutral evaluator applications at any time. The roster is maintained and updated by Rachel Morrison, Temporary Special Assistant Anoka County Attorney, as well as our ENE coordinators, Melissa Epping and Kim Murdoff.

In order to ensure that our CPENE neutral evaluator teams are qualified to handle a range of custody and parenting time issues, non-attorney evaluators are typically paired with attorney evaluators and evaluators who do not practice in Anoka County are paired with evaluators who regularly practice in Anoka County.

Process

Within three weeks of initial pleadings, all dissolution cases as well as privately initiated paternity cases, custody and parenting time cases and privately initiated legal separation cases are scheduled for an ICMC. There is a core group of seven judges – the original five pilot judges and two others - who preside over ICMCs and give the ENE presentation. Because the blocked judge on a case may not necessarily be the ICMC judge, the ICMC judges relay a summary of each day's ICMCs to the entire bench. This open communication by the ICMC judges allows each judge to be aware of the status of his or her blocked cases.

When a dissolution file is opened, court administration schedules it for an ICMC hearing before one of the pilot judges within three weeks of the initial pleadings. ICMCs are held every Thursday and Friday at half-hour intervals.

Once court administration schedules the ICMC, a notice is generated on MNCIS and is sent to the parties/attorneys. This notice indicates the name of the judge to whom the case is blocked, the name of the judge doing the ICMC, and the date and time of the ICMC. Along with this notice, an ICMC Data Sheet (see Appendix X-V) is provided to the parties for them to complete and submit before the ICMC

conference. The notice informs the parties that they are prohibited from bringing any motions or engaging in formal discovery pending the ICMC hearing.

After ICMCs, the ICMC judge communicates to the entire bench the outcome of each ICMC and provides a summary of the ICMC results so that the blocked judges are informed of their case's status. This bench-wide correspondence facilitates communication between ICMC judges and the dissolution judges concerning the possible outcome of the case, which in turn reduces court resources and the amount of time a judge's law clerk might spend on investigating the status of each file.

The ENE coordinators, Melissa Epping and Kim Murdoff, handle all referrals to the neutral evaluators. Immediately following the ICMC, the parties and their attorneys meet with the ENE coordinators who assign the neutral evaluator(s), and determine the date, time and location of the initial ENE session. The coordinators write this information onto the Conference Order for ENE (see Appendix X-W), which has already been signed by the judge, and copies are given to everyone before they leave the courthouse. This order also contains standard language regarding penalties for cancelling a session and deadlines for submitting any agreements in writing to the court.

The ENE coordinators select evaluators according to each evaluator's availability. The evaluators send the ENE coordinators their general availability for a one to two month period in order to avoid scheduling conflicts. The program has also incorporated use of the online Google Calendar in order to facilitate more efficient scheduling for the neutral evaluators. Once an evaluator is selected, the coordinators always phone the evaluator to confirm his or her availability before entering the date, time and location of the initial ENE session on the order.

Each party who opts for ENE leaves the courthouse with an Order for ENE. This order indicates whether the parties are opting into CPENE, FENE or both. The order also provides the name of each evaluator assigned, as well as the date, time, location and fees for the initial ENE session. The order also contains standard language regarding penalties for cancelling a session and deadlines for submitting any agreements in writing to the court. The order may also contain agreements the parties may have reached at the ICMC.

Please see Appendices X-W and X-X for samples of the orders provided to parties at the ICMC (Order for ENE and Order for ENE with Stipulation and Temporary Order).

Within five days of the initial ENE session, neutral evaluators contact Rachel Morrison to report on the status of the ENE. If additional sessions are required, Rachel Morrison updates this information in a confidential database for later follow-up. If an extension of ENE timelines or a referral to court services is necessary, the neutral evaluators submit a Request for Order Extending Timelines for ENE and Order (see Appendix X-I) or Request for Referral to Court Services (see Appendix X-J) to the blocked judge, copying Rachel Morrison.

Within five days of the conclusion of ENE, the neutral evaluators complete a Memorandum of Understanding/Agreement (Appendix X-F or X-G), or Notice of No Agreement (X-H) and submit these documents to the blocked judge, copying Rachel Morrison.

In addition, at the conclusion of ENE, the evaluators complete a CPENE Evaluator Case Form (see Appendix X-M) and/or FENE Evaluator Case Form (see Appendix X-N), to document the outcome of the ENE, and forward this form(s) to Rachel Morrison. Rachel Morrison then records the reported case status in a confidential database for statistics purposes.

Fees

The program developed the following sliding fee scale for ENEs:

CPENE FEE SCHEDULE

Each party's fee is determined by his/her income	Gross Annual Income	Fee for each party for initial 4 hour session	Hourly rate for each party after initial 4 hour session
<ul style="list-style-type: none"> Income is determined at the ICMC based on the data sheets or information provided at the ICMC Two (2) Evaluators are used in Custody & Parenting time (CP) ENE: always one (1) male evaluator and one (1) female evaluator. CPENE Evaluators are selected from a roster on a rotating basis. 	IFP, recipient of MFIP or General Assistance	No fee	\$75.00
	\$0 to \$25,000	\$200.00	\$75.00
	\$25,001 to \$50,000	\$300.00	\$75.00
	\$50,001 to \$90,000	\$400.00	\$100.00
	\$90,001 to \$125,000	\$600.00	\$150.00
	\$125,001 to \$250,000	\$800.00	\$200.00
	more than \$250,001	Determined by Court	Determined by Court

FENE FEE SCALE

Each party's fee is determined by his/her income	Gross Annual Income	Fee for each party for initial 3 hour session	Hourly rate for each party after initial 3 hour session
<ul style="list-style-type: none"> Income is determined at the ICMC based on the data sheets or information provided at the ICMC One (1) Evaluator is used in Financial ENE 	IFP, recipient of MFIP or General Assistance	No fee	\$75.00
	\$0 to \$25,000	\$150.00	\$75.00
	\$25,001 to \$50,000	\$225.00	\$75.00
	\$50,001 to \$90,000	\$300.00	\$100.00
	\$90,001 to \$125,000	\$450.00	\$150.00
	\$125,001 to \$250,000	\$600.00	\$200.00
	more than \$250,001	Determined by Court	Determined by Court

Data

The program uses two different forms for collecting ENE outcome data: (1) CPENE Evaluator Case Form and (2) FENE Evaluator Case Form. Please see Appendices X-M and X-N for samples of the Evaluator Case Forms.

These forms have been created and modified by the Anoka County ENE Forms Subcommittee and are maintained by Rachel Morrison, who is responsible for collecting the forms and tracking the outcomes in a confidential database. Within five days after the final ENE session, neutral evaluators complete the Evaluator Case Form, which asks for information such as the number of ENE sessions held, the date a written disposition was sent to the blocked judge, the final outcome of ENE, whether there were issues involving domestic violence, mental health or chemical dependency, and the total ENE fees charged to the parties.

In addition to the data collected from the CPENE and FENE Evaluator Case Forms described above, the program maintains statistics on the length of time from case filing to final disposition, as well as the number of cases involving: attorneys, minor children, *in forma pauperis* parties, orders for protection, harassment restraining orders, parties with mental health issues, and parties with chemical dependency issues. In tracking this information, the goal is to ensure the continued success of the program by honing in on issues that might jeopardize the continued success of the program so that the program may address these issues early on either by adapting program policies and guidelines or through additional neutral evaluator training and peer consulting events.

The program also makes improvements by asking neutral evaluators to distribute and submit confidential evaluation forms, which are completed by the parties, their attorneys, and the neutral evaluators themselves. These evaluations address the participants' satisfaction with the ENE process from the ICMC through completion of ENE and also solicit suggestions for how our program can be improved.

Data from the first six months of 2010 indicate the following:

JANUARY - JUNE 2010 ANOKA COUNTY ENE STATISTICS

No. of ICMCs	257
No. cases settled at or before ICMC	20
No. of cases referred to ENE	127 (67%) <i>** In 46 cases, the parties chose both CPENE and FENE. Therefore, the actual number of ENEs scheduled is 173.</i>
No. full or partial settlement	33 of 55* CPENEs (60%) full or partial settlement (*This figure includes only those 55 CPENEs where outcomes have been reported.) 38 of 68* FENEs (56%) full or partial settlement (*This figure includes only those 68 FENEs where outcomes have been reported.) * There were 12 out of 69 CPENEs and 34 out of 104 FENEs where no outcomes have been reported as of the date of this report. That is a total of 20.29% of CPENEs and 34.62% of FENEs where no outcomes have been reported to date.
No. referred to mediation or other ADR	1
No. referred to Court Services	1
Average no. of days to settlement	80 <i>** This figure only includes those cases that have closed. Currently, there are 178 out of a total of 257 cases that have not closed in this reporting period. That is a total of 69% of cases within this period that have no close date as of this report.</i>
No. parties with legal representation	252 (49%)
No. parties self-represented	264 (51%)
No. of cases w/ 1 IFP party	31 (6%)
No. of cases w/ 2 IFP parties	5 (1%)

**** NOTE:** The program does not believe this data is an accurate reflection of the program's success based on the overwhelmingly positive feedback from judges, attorneys, neutral evaluators and parties it has received as well as the general consensus among the judges that there has been a decline in the number of temporary hearings and court trials since implementation of the pilot program. Many

variables might contribute to the statistics reported above, including but not limited to the fact that 72 percent of the program's ENEs have no outcomes reported to date. The program will continue to monitor the cases comprising these statistics, including pulling individual court files in order to explain additional factors that may have contributed to the data reported.

The program is currently in the process of compiling data from MNCIS and MNJAD in order to compare the total number of temporary hearings and court trials our judges heard prior to our pilot program began to the number of temporary hearings and court trials our judges hear since implementation of the program. While the general consensus of the bench is that there have been fewer temporary hearings and court trials since ENE started, the hard data seen in the MNCIS/MNJAD reports do not reflect that. The program believes there is a serious flaw with the data entry and/or reporting process in MNCIS and MNJAD, and is having court administration staff look into this issue. The hope is that they will have more accurate data in the near future.

Forms

The program has spent a great deal of time and effort creating and modifying comprehensive forms for use by neutral evaluators, judges, attorneys and parties. Anoka County ENE neutral evaluators use the following forms, all of which are currently provided to evaluators in electronic format (CD and/or email) and will be accessible on Anoka County's ENE Web page in the near future and may be found in Appendix X:

The following forms are used by court administration and/or ICMC judges:

1. Anoka County ENE Process (*Appendix X-R*)
2. Anoka County Family Court Early Neutral Evaluation Program Description (*Appendix X-S*)
3. Program Policies and Guidelines (*Appendix X-T*)
4. Fee Scale for Anoka County Early Neutral Evaluation (*Appendix X-U*)
5. ICMC Data Sheet (*Appendix X-V*)
6. Conference Order for ENE (*Appendix X-W*)
7. ICMC Order for ENE with Stipulation and Temporary Order (*Appendix X-X*)
8. Order Assigning Evaluator for Early Neutral Evaluation (*Appendix X-Y*)
9. Order Referring to Court Services (*Appendix X-Z*)

The following forms will also be accessible by attorneys and/or parties from the upcoming ENE Web page:

1. ICMC Data Sheet (*Appendix X-V*)
2. Program Policies and Guidelines (*Appendix X-T*)
3. Fee Scale For Anoka County Early Neutral Evaluation (*Appendix X-U*)

Challenges

One challenge the program faces in trying to capture data is in those cases where parties fail to appear at scheduled ENE sessions. Oftentimes in these cases the neutral evaluator(s) has had no contact from either or both parties and is therefore unable to provide some or all of the requested information. Additionally, tracking length of time to final disposition can be difficult especially in those cases where ENE was unsuccessful and trial dates are scheduled well out in the future. With time, this data can be collected, however, without the information now, it is difficult to quantify the success of our program based solely on the time to final disposition.

Based upon the original success of the pilot program - which began with only five pilot judges – the program expanded to all sixteen judges, with only a core group of judges presiding over ICMCs. This expansion has made it difficult to track and maintain every file and data collection has become a much more extensive undertaking. After the program's expansion, the ENE coordinators were unable to manage the data while continuing to attend all the ICMCs and schedule the ENE sessions. In April 2010, Rachel Morrison was brought on board to take over management of the data and statistics. Since Rachel was hired, she has been working on bringing the data up-to-date since the expansion of the program, which task is especially complicated by those cases where neutral evaluators have not reported ENE outcomes.

Another obstacle the program faced is inaccurate data reporting in MNCIS. While MNCIS reflects a large number of court trials and temporary hearings taking place year-to-date, our judges have reported a significant reduction in the number of court trials and temporary hearings on their family court calendars. In particular, the lead judge, Judge Sharon Hall reviewed her personal family law court calendar data and verified that she had one family court trial since January 1, 2010. However, MNCIS erroneously reported that Judge hall had a total of twenty family court trials held since January 1, 2010. The program is currently working with court administration and district administration to rectify the flawed MNCIS data reporting and to assure accuracy in the collection of data.

A large part of the success of the program to date has been due to coordination efforts. Unfortunately however, coordination – and paying for it - is also one of the biggest challenges the program faces. While in the past the program has utilized the SJI Grant, donations from Central Minnesota Legal Services, funds from the MN State Bar Foundation, and money and staff time contributed by Anoka County, the lack of certainty regarding the continued availability of these funds is concerning. The program has received funds from the bar association to reimburse neutral evaluators who accept IFP cases, however, its most recent request for additional funding from the bar association for such funding was denied because of limited funds.

Another problem the program faces is finding male neutral evaluators for the program. To help address this problem, the program maintains an open and ongoing neutral evaluator application process and accepts applications at any time. In addition, it does not have any set limits to the roster. In this manner the program hopes to continue to receive more applications from male evaluators who will be added to the roster.

Consistency of enforcement of program policies and guidelines is another ongoing issue. In order to address this problem, the program regularly conducts peer consulting events involving judges and neutral evaluators and continues to update rules and guidelines, modify forms and conducts regular refresher training.

ENE cases involving domestic violence issues have been a concern among neutral evaluators and attorneys representing parties in ENE. Recently, the program conducted domestic violence training and a peer consulting event, where Prof. Nancy Ver Steegh from William Mitchell College of Law discussed domestic violence issues and strategies for properly handling cases involving restraining orders. This training proved to be extremely educational and received favorable feedback from many participants. In addition, representatives from Alexandra House, a local domestic violence shelter, serve on the steering committee and are excellent resources for helping address domestic violence issues that arise.

One issue that the program is attempting to resolve is the problem the ENE coordinators have when scheduling the initial ENE sessions at the ICMC hearing. For each case, the coordinators might have to call several different evaluators in order to check for scheduling conflicts. Calling several evaluators on each case lengthens the time parties and their attorneys spend in court at the ICMC and is not an

efficient use of the coordinators' time. To address this problem, the program implemented a system in which evaluators send their schedules to the coordinators one to two months in advance. In addition, the program has integrated use of the online Google Calendar, which allows neutral evaluators to continuously update their calendars online for the coordinators' review.

Keys to Success

Since expanding its program to all dissolution cases, Anoka County has experienced a high settlement rate for ENEs. Those involved believe our program is successful for many reasons:

- Support from the bench and bar,
- Strong steering committee with regularly held meetings,
- Strong subcommittees so the work is spread around,
- Application and screening process for accepting qualified and skilled neutral evaluators for the roster,
- Sliding fee scale,
- Skilled ENE coordinators Melissa Epping and Kim Murdoff, who select the neutral evaluators and schedule the initial ENE sessions, and
- Talented staff person, Rachel Morrison, who oversees everything – updates forms, is the contact person for neutrals, etc.
- Continued training for neutral evaluators, especially in the area of domestic violence issues to insure evaluators are familiar with our program's policies and guidelines,
- Representatives from Alexandra House - the local domestic violence shelter - on the steering committee,
- Judges who are trained to give the presentation to the parties at the ICMC session.

In order to assure the continued success of our program, the program hopes to obtain additional funding for neutral evaluators who request financial reimbursement on IFP cases so that evaluators continue to accept these cases. In addition, the program plans to continue ongoing training and education programs, making sure evaluators are familiar with program policies and guidelines and enabling evaluators to address any of their concerns to the steering committee for prompt resolution. Also, the program is in the process of creating a Web site from the state's ENE Web page, from which evaluators, parties and attorneys can obtain information about the program and download forms.

Feedback

The program continues to receive very favorable feedback about the program not only from the neutral evaluators themselves, but also from attorneys and parties who have gone through ENE in Anoka County. Most of this feedback has been extremely complimentary and encouraging and has enabled the program to focus on ways it can improve the program. The following are some quotes taken from evaluations received from evaluators, attorneys and parties:

“The ICMC judge was very encouraging when explaining the ENE process to the parties.”

“The ENE process works well!”

“ENE is a great process and should continue to be used.”

“This program is working like ‘clockwork’ – great job!!”

“The Evaluator was highly effective.”

“Good job by the ENE Evaluators!”

“Great job Evaluators!”

“I would recommend our Evaluator to anyone in my situation without hesitation. The Evaluator was very good. I can’t say enough about this Evaluator. Except thank you.”

“The ENE process was beneficial to the parties.”

“I appreciated the Evaluators’ commentary and legal opinion as to non-marital issues and valuation.”

“I was glad to have this resolved – we were able to complete ENE within 3 hours.”

“The ENE process worked smoothly for all of us involved.”

“This was a very productive process.”

Judges have also been pleased with the success of the program. For the most part, judges report that they have seen a reduction in the number of contested dissolutions, which not only promotes judicial efficiency but eases the divorce process for parties and their attorneys. The following are some of the comments judges have made:

“When the ENE program was first discussed I was skeptical, but now I have been converted. Cases which should be resolved are being resolved much earlier in the process. Cases which used to be resolved at a pre-trial are now getting resolved within a couple of months of filing and with a lot less animosity. Getting involved early in the case has also reduced the need for temporary hearings.”

– Hon. Lawrence R. Johnson, Chair of Anoka County Bench

“ENE promotes the early resolution of dissolution cases. This is good for the courts as it frees up our calendars so we can spend more time on the very difficult cases that are impossible to settle. But it is even better for the parties because it saves them the financial and emotional pain of the traditional and lengthy court process and gets them a resolution early so there is less acrimony and hostility between them. If the parties have children, it helps the children as there is less fighting between their parents and their college funds will not be used to send their parents’ lawyers kids to college.” - Hon. Sharon L. Hall

“ENE has provided many families with assistance to reach a quick and cost effective dissolution of their marriages. Families and the court system benefit when the parties can rely on the help of highly trained neutrals to assist them expediently in moving on with their separate lives.” - Hon. Jenny Walker Jasper

The program would like the Minnesota Supreme Court to be aware that a quality program requires funding and skilled coordinators/supervisors/a person in charge to have things running smoothly, within timelines, and according to guidelines to ensure the program’s success.

H. Tenth Judicial District/Washington County

Washington County is located on the east side of the Twin Cities metropolitan area and is part of the Tenth Judicial District. The population of Washington County according to the most recent U.S. Census Bureau data is 231,958 and the family court dissolution with children filings in 2009 were 426.

The lead judges for the program are the Honorable Gregory Galler and Richard Ilkka. In addition to the lead judges, the program is led by steering committee co-chairs Sean Stokes and Thomas Tuft.

The program offers both SENE and FENE. The program launched in January 2010.

Timeline

The Washington County pilot benefitted from strong leadership from representatives from the bench, bar, and court staff. Judges Galler and Ilkka are highly respected in the legal community. Having such strong leaders made it clear to all stakeholders that this was a program that would be moving forward. While the judges were willing to hear from all concerned and build consensus, they were willing to make decisions and move forward when necessary. Sean Stokes and Tom Tuft are also highly respected members of the local bar and their co-chairs designation sent a clear message that ECM/ENE was going to be happening in Washington County. Many others contributed to addressing early issues that arose. Judge Hall and Marna Anderson from Anoka County, Referees Madden and Leppanen from Ramsey County, Judge Manrique as the ECM/ENE Initiative Lead Judge, and Jim Goetz from Hennepin County Court Services all helped in the early planning stages. Staff from Tom Tuft's law firm assisted, and Lisa Logghe, a court staff manager in Washington County, assisted with logistics and her knowledge of what court staff could do to help.

On August 6, 2009, Judges Galler and Ilkka, Sean Stokes, and Tom Tuft all met to develop a plan for a steering committee and recruiting volunteers to help launch ECM/ENE in Washington County. The Washington County bench had agreed unanimously to implement ECM/ENE and the steering committee was directed to move ahead quickly. The steering committee met throughout the fall and any case (primarily divorce and paternity cases) filed on or about December 7, 2009, was set for an ICMC. On November 20, 2009, the Washington County program held a combined training and kick-off event. Tom Tuft and Lisa Logghe planned the event and Dave Meier, Joan Lucas, and Linda DeBeer provided training to rostered evaluators in the Washington County approach to ECM. Of the ten judges in Washington County, eight hold ICMCs regularly. The first ICMCs were held in January 2010.

In order to ease the county's case load as it implemented ECM/ENE, the Minnesota Chapter of the American Academy of Matrimonial Lawyers (AAML) agreed to provide moderated settlement conferences for pending, high conflict family court cases. Judges were asked to provide their most difficult cases. Services were provided pro bono. A moderated settlement conference is a late-stage alternative dispute resolution (ADR) process in which an experienced attorney uses evaluative mediation techniques and other methods to encourage settlement. The AAML attorneys provided moderated settlement conferences on 30 cases, thus freeing up judge and court staff time.

Roster and Qualifications

The steering committee formed a roster subcommittee, which established qualifications and spread the word about the roster recruiting process through listservs (Minnesota State Bar Association (MSBA) Family Law, MSBA Solosmall, Collaborative Law, and the American Academy of Matrimonial Lawyers Minnesota Chapter). Applicants were given ten days to respond. The response from mental health professionals was disappointing so the subcommittee contacted Court Services Departments around the Twin Cities and sought other avenues to get the word out and actively recruited well-respected mental health providers. Applicants were asked to submit a one-page letter expressing interest. A member of the roster subcommittee contacted each applicant to verify qualifications. Ultimately, 75 qualified individuals applied. From this list, the Washington County judges selected 24 SENE neutrals and 12 FENE neutrals for the rosters, based upon the number of family law cases filed in

the county, the percentage that were expected to select an ENE process, and the workload each neutral could be expected to handle.

Applicants had to have been in practice for ten years with five years in the family law field and be listed on the state's Rule 114 neutral roster. In addition, they had to have mediation training and ENE training. They are also required to have attended three ride-alongs, i.e., observations. All rostered neutrals indicated the names of other neutrals with whom they would be willing to work and the male/female teams were created based on their responses. Rostered neutrals must agree to be bound by the program's fee schedule. Court administration maintains the roster.

Process

ICMCs are scheduled by court administration. The ICMC occurs about 30 days after filing. If the parties opt in to ENE at the ICMC, the court issues an order. It is sent usually by fax to the attorneys. The referral to the evaluators is made preferably at the ICMC. Parties typically will receive a letter confirming the issues, the date of the ENE, and a retainer agreement from the evaluators.

The parties are encouraged to complete a settlement agreement form at the ENE. If they are unable to do so, the evaluator(s) provide a letter to the court updating as to the status of the process

Fees

For FENE the parties each pay one-half of their attorney's rate. For SENE, each side pays their own attorney's rate. There is a sliding fee scale for unrepresented parties. If a party is represented by legal aid or qualifies for in forma pauperis (IFP), there is a \$50 flat fee.

Data

The Washington County program has not yet finalized a data collection process. Dax Stoner, who volunteers to collect FENE data for other programs (Hennepin and Ramsey Counties) has agreed to collect FENE data for Washington County, although the work of all this data collection is overwhelming. The Washington County program could use a central data collection resource.

Forms

The forms for the Washington County program may be found in Appendix XI and include:

1. Standing Order Re Early Neutral Evaluation Cases in Washington County, Minnesota
2. Order For Early Neutral Evaluation
3. Initial Case Conference Data Sheet
4. SENE Informational Sheet
5. FENE Informational Sheet
6. Financial Fee Schedule
7. Social Fee Schedule

Challenges

The program had the support of the bench, bar, and court administration, as well as other program models to follow. As a result, the program came together relatively easily with no significant challenges.

Keys to Success

The Washington County ECM/ENE program benefitted from exceptional leadership at the state and local levels; support from the bench, bar, and court staff; high quality training of bench and ENE

evaluators; and a strong history of success of the program in other districts. All of these factors came together to make the Washington County program get off to a smooth start very quickly after the bench decided to go forward.

Judges are seeing cases settle at the ICMC stage—an extremely early point in the case—and a high percentage of cases that do not settle at the ICMC are settling in ENE. The rate of settlements this early in the process makes this a program that stands out as a success.

IV. Programs In Development

A. First Judicial District/Dakota County

Dakota County's ENE program launched in mid June of 2010. Since its inception, the program has run smoothly. The program continues to search for and implement improvements. It recently ironed-out documents (Court Orders and Notice of ICMC) to create a more streamlined process for Judge Teams and ENE providers. The program is currently working on ICMC scheduling issues in attempts to deal with a large volume of continuance requests, which threaten to push ICMC hearing dates out further than the recommended three to four weeks from the date of filing. As issues such as this one arise, it would be helpful to have a list of contacts - one or two individuals from each county who can serve as a representative for their respective ENE program - who would be willing to field questions and share ideas on strategies for dealing with common issues. The program is working on issues like this one and others.

The program has been very successful. It has received positive feedback from lawyers and ENE providers. Participants are pleased with the cost-effective approach to resolving issues early in the dissolution process and with the guidance they receive from the presiding judge. Lawyers have remarked that they find the ICMCs a very productive use of their time. ENE providers have expressed their appreciation for the detailed Orders they receive immediately after the ICMC. Most importantly, our statistics provide objective proof that the program is getting things done. Approximately 63 percent of the cases are removed from the adversarial process at the ICMC either by complete settlement or by agreement to go the ENE route. The program anticipates that, as it continues to implement improvements to the program, it will see even greater success rates. Judge Teams involved in this program are enthusiastic about its current success and future potential.

B. First Judicial District/Carver and Scott Counties

Scott and Carver Counties began working last spring on developing a pilot ENE program. A steering committee was chosen and began meeting to determine how to develop a program including an ENE fee schedule. Two subcommittees were formed. One subcommittee set criteria for ENE providers and recruited and ultimately determined our initial ENE roster. The second subcommittee worked on developing forms.

In July there was a joint training in Carver and Scott Counties to educate judges, law clerks and court administration staff on the ENE process generally, how to conduct an ICMC, and what forms and orders would be used in the court process. Recently, the steering committee met with all of the ENE providers to finalize our pilot ENE process. The providers will be announced at the end of September. ENE forms are currently being finalized and will be distributed to judges, court administration and providers soon.

Both counties anticipate beginning the program in October. Cases will be blocked to a judge and set for an ICMC approximately two weeks after filing. Every judge in both counties will participate in the program.

C. Seventh Judicial District--West

The program is moving forward in Clay, Becker, and Otter Tail Counties. The program started in Clay on September 1, 2010. Becker and Otter Tail Counties plan to start up later this fall. The program could use training options for the Rule 114 mediation training and another opportunity for judges to get the ENE training. Beyond that, the program will have a better sense about what additional training might be helpful after it is up and running for a while.

D. Seventh Judicial District--East

The hope in Stearns County is to have the ENE program implemented by the end of the year. A steering committee is working on getting our forms and procedures set in place. There is a great need for ENE training of other interested judges and mediators. The Institute for Alternative Dispute Resolution at St. Cloud State University is also very interested in adding ENE to its areas of mediation. The Institute has at least one trained ENE provider but would like to have more trained.

E. Eighth Judicial District

The program will be having one more meeting with its work group and hopes to present the program to its judges at their October 1 judges' meeting for adoption on a district-wide or at least assignment area basis. If approved, it is hoped it will be ready to implement on November 1. The program has a list of 26 neutrals who have applied for inclusion on its SENE and/or FENE rosters.

Although more training to hopefully attract additional neutrals in the rural area would be helpful, the program is not sure it would benefit from more training until the program has been in operation for a while and folks get to see how well it works. What might be more useful in six to twelve months would be some sort of refresher or feedback session to allow trained neutrals to share feedback on what works and what does not.

V. State Court Administrator's Office Staffing

A. Statewide Steering Committee

In the spring of 2008, a program analyst in the Court Services Division of the SCAO began devoting 40 percent time to the ECM/ENE Initiative. The role of the program analyst was to provide staffing for the ECM/ENE Statewide Steering Committee, which was now meeting regularly, and to administer ENE training programs to support statewide expansion, as well as assist with other technical assistance for pilot programs as they prepared to launch.

The Statewide Steering Committee, co-chaired by Judges Tanja Manrique and Robert Benson, held in-person meetings an average of four times a year and held telephone conference calls in between in-person meetings. The SCAO program analyst scheduled these meetings, sent meeting notices, worked with the co-chairs to set agendas, and handled other logistical arrangements for these meetings.

B. ENE Training Programs

SCAO sponsored nine ENE training programs during the grant period on the following dates:

1. November 28, 29, and 30, 2007—Duluth/Southern St. Louis County/Sixth Judicial District
2. February 13 and 14, 2008—Anoka County/Tenth Judicial District—Anoka County Parks and Recreation Center
3. September 15, 16, and 17, 2008—Brooklyn Center/Metro Area—Crowne Plaza Minneapolis North
4. January 28, 29, and 30, 2009—Grand Rapids/Itasca County/Ninth Judicial District—Timberlake Lodge
5. June 24, 25, and 26, 2009—Woodbury/Washington County/Tenth Judicial District—Sheraton Woodbury
6. November 16, 17, and 18, 2009—Chaska/Carver County/First Judicial District—Oak Ridge Conference Center
7. February 9, 10, and 11, 2010—Alexandria/Douglas County/Seventh Judicial District—Arrowwood Resort
8. March 2, 3, and 4, 2010—Willmar/Kandiyohi County/Eighth Judicial District—Holiday Inn
9. June 21, 22, and 23, 2010—Brooklyn Center/Metro Area—Crowne Plaza Minneapolis North

The SCAO program analyst managed all logistics for administering these training programs (except the first two) including promotion, registration, facilities logistics and contracts, on-site staffing, and continuing legal education (CLE) applications. The registration flyer for the June 2010 training program may be found in Appendix XII. In addition, the schedules for the SENE and FENE training programs may be found in Appendix XIII.

In addition to these nine programs, the program analyst coordinated two one-day refresher courses, one in the Duluth program and the other in Anoka County. Refresher courses provide an opportunity for trained evaluators to meet with the lead trainers again to review principles covered in the main training program and have questions answered in a more intimate setting. The Anoka County program has held additional, shorter sessions periodically.

In an effort to make ENE more accessible to indigent parties and aid expansion efforts statewide, several attorneys affiliated with Legal Services Volunteer Attorney Programs from throughout the state attended the June 2010 training at a reduced registration fee. These attorneys have indicated a willingness to provide ENE services for a reduced fee or no fee. Efforts to connect these attorneys to existing and developing programs are still underway.

As with other forms of ADR, domestic abuse is a significant concern when using ENE. Although domestic abuse does not necessarily preclude parties participating in ENE, ENE evaluators are trained to be attuned to power imbalances and screen for domestic abuse. In the two-day SENE training program,

these issues are addressed by the faculty. The accompanying handout for this segment of the training program may be found in Appendix XIII after the training program schedules.

C. Master Training Rosters

Master training rosters have been created and are maintained by the program analyst for both SENE and FENE evaluators. The rosters include those evaluators who completed SENE or FENE training and indicate where and when they completed training and the city and judicial district in which they practice. These rosters allow programs, judges, attorneys, and other practitioners to view which evaluators may be available in their area. While these rosters indicate that an evaluator has completed training, they do not reflect other qualifications that programs may require of their evaluators. These rosters are accessible via the state ECM/ENE Initiative Web site. Currently, there are nearly 430 trained evaluators on the SENE master training roster and nearly 300 evaluators on the FENE master training roster.

D. Web Site

In order to provide access to the master training rosters and other resources for the programs, an ECM/ENE Initiative Web site has been created on the Judicial Branch public site. It may be found at <http://www.mncourts.gov/?page=3946>. Some programs have their own Web sites and links to those Web sites are included in the state ECM/ENE Initiative site. Other programs are developing Web sites and links to those sites will be added as they are ready.

The current Web site includes pages for the following topics:

- General Information
- Blatz Order and Best Practices
- Pilot Programs (which includes links to individual programs)
- Master Training Rosters
- Articles and Resources
- SJI Final Report (which includes all appendices)

E. SJI Grant Management

Mary McGuire in the SCAO Finance Division provided grant management assistance. She prepared and submitted all quarterly and final financial reports. The program analyst coordinated the preparation of the narrative portions of quarterly reports and monitored all expenditures.

VI. Best Practices

The program descriptions point to several best practices that may guide new and existing programs alike. The following are ones that the programs have flagged as particularly significant:

- Judge ICMC training that enables judges to conduct masterful ICMCs—the quality of the ICMC will influence the direction of the case, the determination of whether ENE is an appropriate ADR option for a particular case and if so the choice to opt in to ENE, and the attitudes with which parties and counsel come to the ENE. Effective ICMCs also address discovery plans and stipulations as to temporary issues.
- Timely scheduling of ICMCs and ENEs—if these are not scheduled within the early days after filing, it can defeat the notion of “early” within the approach of ECM/ENE; indeed, much of

the value in the process that contrasts with a traditional path through family court is in the early opportunity to engage parties in resolving their conflicts before they become protracted.

- Adequate judge and evaluator availability—coverage for when judges are on vacation or out; similarly, evaluator rosters that provide constant coverage with enough male/female teams.
- Skilled coordination whether by an individual coordinator or a combination of people involved in the process and funding where needed to ensure staffing for this function—one or more people need to be responsible for ensuring that the process runs smoothly, within timelines, and according to guidelines, ultimately leading to the program’s success.
- Some mechanism for making ENEs available to IFP parties—whether this is accomplished by using a sliding scale fee, by private funding that reimburses evaluators, or by using guardians ad litem and legal aid attorneys, without some accommodation for IFP parties, ENE will not be accessible to everyone who wants to opt in.
- Highly trained neutrals to assist parties expediently in moving on with their separate lives—the importance of the specialized ENE training program should be emphasized; ENE evaluators often are professionals with many years of experience, however, the SENE and FENE training programs hone in on the particular skill set required for this form of ADR and cannot be substituted and are a hallmark to building a successful program.
- In addition to pairing male and female evaluators for SENE, pairing an attorney with a mental health professional—when possible—adds a complete dimension by blending the social/emotional aspects of the parties with the legal aspects; parties are able to leave the process feeling that their concerns were actually heard and included in the settlement agreement.

VII. Conclusions and Recommendations

It is fair to say that without SJI funding, expansion of ECM/ENE in Minnesota would not have occurred either as extensively or rapidly as it has. The three years of the project provided sufficient time for the Judicial Branch to enable and support local interest in and efforts to implement unique programs in urban, suburban, and rural jurisdictions. While core components of ECM/ENE as it was first used in the Fourth Judicial District are present in each program, variances allow local programs to put their own identity in the program design and increase the likelihood of success.

Three years has also been sufficient time to learn where future work remains. Existing and new programs need ongoing support from SCAO through the state Web site, maintenance of the master rosters, and coordination of training and other technical assistance. These are important contributions for SCAO to make, however, the role is an adjunct to the primary work that the bench and bar collaboratively engages in when creating and running a program.

While some programs have designed their process to require little or no staffing by dedicated individuals (whether in the courts or from the private sector), programs benefit from dedicated staff who handle coordination and scheduling tasks. Therefore, staffing and funding for the coordination function will be an ongoing issue for many programs. Given the current budget environment, securing alternative funding sources will be critical to most pilots.

Another theme relates to recruiting enough male evaluators for social ENEs. Hopefully, over time the rosters will balance out and programs that struggle with a lack of male evaluators will be able to find the male evaluators they need. This issue may suggest the need for additional training programs.

Another theme relates to the notion that without enough referrals, an evaluator may not be able to develop and maintain good ENE evaluator skills. As ECM/ENE expands within districts, trained evaluators may have more opportunities to be placed on more rosters and increase the number of ENEs they are doing. The balance of matching rosters with caseloads is nuanced and one that programs will have to continue to explore. There is an element of the private market that drives selection of evaluators in some programs. Issues relating to family ENE evaluators as ADR Rule 114 neutrals such as ethical complaints and other issues falling under the Rule may be matters for the Statewide Steering Committee to address in the coming year.

As ECM/ENE expands, judicial officers need training that helps them develop mastery of the Initial Case Management Conference and the presentation of the ENE option to parties. When limited funding for judicial training opportunities is combined with the need to limit time away from the bench, providing judge training will be a challenge but must be addressed. It is possible that these training opportunities could be combined with existing programming and that Web based tools could be used, as well.

Finally, one of the greatest challenges going forward relates to data capture and analysis. As the program descriptions in this report indicate, data capture and analysis is possibly the most difficult and frustrating aspect of implementing an ECM/ENE program. Midway through its work in the grant period, the Statewide Steering Committee examined data collection and analysis issues for the ECM/ENE Initiative in depth. A consultant, Deb Eckberg, Ph.D., was hired to review data collection practices in all the pilot programs and make recommendations regarding standardization of data collection. Dr. Eckberg's report may be found in Appendix XIV.

While Dr. Eckberg was able to affirm much of the data collection efforts in the programs, certain data elements were either missing or not being captured uniformly amongst the programs. One conclusion of her review was to create a standardized set of codes in MNCIS so that court staff statewide would be entering ENE-related information the same way. The current local program data collection efforts are useful in demonstrating the number of ENEs conducted and full and partial settlement rates—all necessary and important as a starting point. However, we are not at a point where we can generate data that depicts a larger picture about the impact of ECM/ENE over time. The Fourth Judicial District is now able to do this because of their nine years of experience. However, if we want to someday measure the impact of ECM/ENE on post-decree activity and judge and court staff time statewide, a thoughtful, comprehensive approach is needed and such an approach will require SCAO resources over a period of some months or years.

Notwithstanding the ongoing challenges, the ECM/ENE approach as it has been implemented in Minnesota is replicable in all kinds of jurisdictions as demonstrated in this report. Local judges and practitioners know their courts best. The examples described in this report provide both a general framework and an array of unique ways to tailor the ECM/ENE approach in large or small, rural or urban settings.

Based on all of the above, the following recommendations are made:

1. The Judicial Council has made ECM/ENE a priority in its strategic plan; thus, the Council should provide adequate funding to assure the continued quality and success of the program.

2. Ongoing SCAO staffing commitment for the Statewide Steering Committee, maintenance of the ECM/ENE Web site and master training rosters, administering training programs, and providing technical assistance to newly-launched, soon-to-be launched, and existing programs. SCAO staff should also provide assistance to local programs in identifying and pursuing alternative funding sources.
3. The Statewide Steering Committee should identify and address Rule 114 issues and provide proposals for rule amendments, when necessary.
4. The Statewide Steering Committee and SCAO should provide ongoing judicial training options to help judges master their approach in the ICMC.
5. SCAO should explore the Branch's need, if any, for statewide uniform data collection practices regarding ECM/ENE cases, including the identification of 1) the purpose of data collection, 2) what questions or queries need to be answered to serve the identified purpose, and 4) the MNCIS changes or other data collection methods that will lead to data analysis that answers the identified questions. Appropriate changes to MNCIS, court staff training, and planning for data analysis should follow.
6. The Statewide Steering Committee and SCAO should engage in future planning to identify the future role, if any, of the Statewide Steering Committee and any other needs related to integrating family ECM/ENE in Minnesota in a widespread and enduring fashion.